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DETERMINED IN

THE COURT OF NIZAMUT ADAWLUT.

OCTOBER.

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INDEX

TO

THE PRINCIPAL MATTERS.

ADMINISTERING POISONOUS OR INTOXICATING DRUGS.

A prisoner convicted of administering poisonous and intoxicating drugs with intent to steal, and who admitted that he had for 20 years been making his livelihood by such practices, sentenced to imprisonment for life in transportation beyond sea, 201

AFFRAY.

Case of affray with homicide and wounding. A heavier measure of punishment awarded to those belonging to the party whose oppressive conduct originated the affray, 179

On the trial of a number of ryots for an affray, attended with homicide and wounding, with the armed servants of the farmers, it appeared that the ryots had been provoked, on the night previous to the occurrence, by serious violence and ill-treatment, on the part of some of the farmers' servants, accompanied by several police and revenue burkundazes, and that, in the affray, four of the ryots were killed and four wounded by stabs or thrusts, while the wounds inflicted on the farmers' servants were comparatively inconsiderable, and the ryots had not ill-treated four of those servants whom they seized and carried away from the scene of the affray. Under the peculiar circumstances of the case, it was thought sufficient to sentence the principal leader of the ryots to imprisonment for two years with a fine of 30 rupees, and the re-

minder of the party to imprisonment for one year with a fine of 15 rupees each, 220

APPROVERS.

It does not invalidate the evidence of principal offenders, made approvers, that they have been admitted to be approvers contrary to the intentions of Regulation X. of 1824, 111

ASSAULT.

Where other crimes, as homicide or wounding, are committed in direct connection with, and in furtherance of, a riot and assault, the charge should invariably be of riot and assault attended with such other crimes, and not of participation in those other crimes only. Six prisoners acquitted, as they were charged with homicide and wounding only, and they could not satisfactorily be identified as having been concerned in those crimes, though there was proof of their having participated in the riotous and unlawful assemblage and attack, in pursuance of which the homicide and wounding occurred, . . . 138

BREAKING JAIL.

The offence of escaping from jail, while under a sentence of imprisonment, if committed without violence, is one on which, even although it may have been several times previously committed by the same prisoner, it is not proper that a commitment should be made to the

sessions court. It is for the magistrate to pass sentence in such a case within the limit of his powers, with reference to Construction 501, and Section 5, Regulation XII. 1818, 187

CONFESSIONS.

Confessions taken before a magistrate, who did not give his undivided attention to them when recorded, cannot be received as legal evidence, 174

A foudaree confession cannot be received in evidence when made only before the assistant to the magistrate. The Circular Order No. 54, of July 16th, 1830, paragraph 20, requires a confession to be taken "on a personal examination by the magistrate himself," 185

CONSPIRACY.

The mere reading over, or causing to be read over, to witnesses in attendance for examination in a magistrate's court, notes of the deposition of a witness who has been under examination, is not, in itself, a criminal offence. It is the duty of a magistrate to take proper measures for the purpose of preventing communication with witnesses in attendance before his court, 210

CULPABLE HOMICIDE.

A prisoner, convicted of culpable homicide by beating a girl heavily with shoes for the expulsion of a supposed evil spirit, from the effect of which beating, the girl died, sentenced, there having been clearly no malicious intent, to imprisonment for one year without labor, 137

A prisoner sentenced to two years' imprisonment and to pay a fine of rupees 20 in lieu of labor, for having permitted a person, for whose arrest he held an order of the civil court, to be beaten and ill-treated by the decreeholder and others, to such an extent that he died in consequence immediately after, .. 192

Conviction of aggravated culpable homicide, instead of murder, as recommended by the sessions judge, the act appearing to have been one of sudden heat and passion, after what might have been the most serious provocation, 196

A prisoner charged with culpable homicide, acquitted on the ground that the mere circumstance of being present, when the beating which caused the death of the deceased was inflicted, was not sufficient evidence of criminal privity to the fact, of which the factwa of the law officer found him guilty, 228

DACOKTY.

Some of the principals were made approvers in a case of dacoity with murder, 111

A conviction of receipt of stolen property can only be sustained when there is proof of the personal possession of such property by a prisoner, as by having the property in his own hands, or directly under his personal charge, or within his house, with his consent, and with a knowledge on his part of its having been obtained by theft or robbery. When proof of personal possession in some of these modes is wanting, there may be ground for a conviction of accessoryship after the fact in a theft or robbery, but not for that of the receipt or possession of the plundered property, 147

Acquittal of prisoners on the ground of marked discrepancies between the first statement of a prosecutrix at the thanna, and her subsequent depositions, and of improper delays in the record of confessions before the police, 226

EMBEZZLEMENT.

A treasurer, or acting treasurer of the Lohardugga division of the Chota Nagpore agency, convicted of criminal breach of trust in being accessory to the misappropriation of public funds by the principal European officer of the district; and a writer in the English branch of the office convicted of privity to such criminal breach of trust. Under the peculiar circumstances of the case, the two first named prisoners sentenced to imprisonment for one year, and the last prisoner to imprisonment for six months, .. 156

EVIDENCE.

It is highly irregular and objectionable to allude to a paper, termed a dying declaration of a deceased party, as evidence,

when the authenticity of that declaration has not been proved by witnesses at a trial, and when the declaration was not one made *in articulo mortis*, but, on the contrary, nearly a month before the date of death of the deceased, at a time when his wounds were not considered of a dangerous character, . . 150

EXORCISM.

Death resulting from the effects of beating under the directions of an exorcist, the prisoner was sentenced to one year's imprisonment, 137

FORGERY.

Prisoners, charged with forgery in attempting to give effect to forged documents, acquitted on the ground that the evidence did not shew either that the documents really had been fraudulently altered, or that the prisoners were aware that the alterations in the said documents had been made with fraudulent intent, 215

HAZAREEBAGH.

There is a discretion in the Nizamut Adawlut, under the terms of Section 6, Regulation XII. 1833, to determine whether, in the territory under the Chota Nagpore agency, an act is punishable as an offence, without reference to the provisions of the Mahomedan or other positive law, 156

INDICTMENT.

Where other crimes, as homicide or wounding, are committed in direct connection with, and in furtherance of, a riot and assault, the charge should invariably be of riot and assault attended with such other crimes, and not of participation in those other crimes only, 138

A charge of "concealing the circumstances of a murder" is improper. The charge should have been framed distinctly of accessoryship after the fact or privy, 141

INSANITY.

There having been indications of insanity in the past conduct of a prisoner, he was convicted of the murder charged, but sentenced to imprisonment for life in the zillah jail, 107

A prisoner liable to fits of insanity, convicted of murder, as the proof did not amount to that required by Section 1, Act IV. 1849, 144

In a case of murder from some unascertained motive, an inquiry which was made by order of the Court shewed that there was no doubt as to the perfect sanity of the prisoner, and a capital sentence was passed, 163

MAHOMEDAN LAW.

There is a discretion in the Nizamut Adawlut, under the terms of Section 6, Regulation XII. 1833, to determine whether, in the territory under the Chota Nagpore agency, an act is punishable as an offence, without reference to the provisions of the Mahomedan or other positive law, 156

MURDER.

A prisoner convicted of murder; but as there were indications of the influence of insanity in his conduct, and the prosecutor had stated, in his first report of the transaction at the thanna, that the prisoner had once been out of his mind though he had subsequently recovered, it was thought sufficient to sentence him to imprisonment for life in the zillah jail, 107

A sessions judge, giving to a prisoner charged with murder, the benefit of doubts as to his state of mind at the time at which he committed the crime, proposed that he should be acquitted, but detained for life in the district jail, as it would be unsafe to permit a person of his character to go at large. The Court convicted the prisoner of the murder, as the evidence did not establish that he was at the time "unconscious and incapable of knowing that he was doing an act forbidden by the law," upon which finding alone, upon a plea of insanity, a sentence of acquittal can be passed under Section 1, Act IV. 1849, and sentenced him to imprisonment for life in the district jail with light labor and fetters, according to the directions of the medical officer of the jail, . . 144

It is highly irregular and objectionable to allude to a paper, termed a dying declaration of a deceased party, as evi-

dence, when the authenticity of that declaration has not been proved by witnesses in a trial, and when the declaration was not one made in *articulo mortis*, but, on the contrary, nearly a month before the date of death of the deceased, at a time when his wounds were not considered of a dangerous character, . . . 150

The principal in the murder of two girls, one of 16 and the other of 7 years of age, sentenced capitally, and two principals in the second degree sentenced to imprisonment in transportation for life, it being probable from the evidence that violence had been attempted, if not completed, on the person of the elder girl, 212

MURDER OF A WIFE.

The prisoner convicted of deliberate murder; and as there was no question of his perfect sanity, and nothing in his favour but the assertion in his confessions of some fanciful suspicions as the motive for his crime, sentence of capital punishment passed against him, . . . 110

Capital sentence passed on a prisoner who had murdered his wife, a young girl not arrived at puberty, from some unascertained motive. An inquiry which was made by order of the Court shewed that there was no doubt as to the perfect sanity of the prisoner, 163

In the absence of proof of legal justification of a murder of a wife by her husband, such as would have been afforded had there been evidence to the husband having detected the wife in the act of adultery, held that the Court could not properly pass a less sentence than one of imprisonment in transportation for life. There being, however, strong presumption that the deceased was seized either in the act of adultery, or at least when found secreted with her paramour, it was not thought fit to pass a capital sentence either on the husband, or on his nephew, who aided him in the murder, 189

MURDER OF A CHILD.

Capital sentence passed on a woman for the murder of her stepson, a child of five years of age, the act having been deliberate for the sake of plundering the

child of its ornaments, as well as possibly from other motives, and there being no good ground for doubting the sanity of the woman. The sessions judge had recommended a mitigated punishment of imprisonment for life, but had referred to no circumstances which could justify the mitigation, 202

PRIVITY TO MURDER.

On a charge of "concealing the circumstances of a murder by sinking the body of the deceased into the river," the sessions judge, holding the charge proved against two of the prisoners, sentenced them to six months' imprisonment and a fine of 50 rupees in lieu of labor. Regarding this as a sentence on a conviction as for privity only, which might have been understood by the sessions judge to be the meaning of the vague terms of the charge, the Nizamut Adawlut did not interfere, but pointed out that such a sentence, even on a conviction of mere privity to murder, was unduly light. (See Ruggoo Muna's case, Nizamut Adawlut Reports, vol. IV. page 54.) It was added that according to the tenor of the Circular Order, No. 8, June 7th, 1847, the charge should have been framed distinctly either for accessaryship in the murder after the fact, or for privity, 141

PRIVITY TO THEFT.

A sessions judge having proposed to convict and sentence a prisoner of privity to theft, on the ground only of an agreement which he had given to the prosecutor, and which the prosecutor had accepted from him, promising the restoration of the stolen property in four months, held (there being no proof that any part of the stolen property had been in the possession of the prisoner, though part of it had been traced to the possession of his son) that such a privity, with assent of the prosecutor, is not a ground for a penal conviction, 135

RECEIVING STOLEN OR PLUNDERED PROPERTY.

Personal possession of the property is necessary to constitute the crime of knowingly receiving stolen property, . . . 147

I N D E X.

The possession of articles of property known to have been obtained by theft or robbery is distinguished from the knowing receipt of stolen property, by the Circular Order No. 215, of January 25th, 1819, and is, therefore, not within the exceptions of Clause 1, Section 2, Regulation II. 1834, 175

RIOT AND ASSAULT.

See Assault.

SECURITY FOR GOOD CONDUCT.

When a sessions judge may think it proper to act upon the authority vested in him by Clause 2, Section 2, Regulation VIII. of 1818, as regards the demand of security from prisoners, who may appear, from the record of a trial before him, to be of notoriously bad or dangerous character, he ought to give to the prisoners the opportunity of summoning all witnesses whom they may desire to have heard on the subject of their character and livelihood, and ought not to pass orders till after full consideration of the statements of such witnesses. It is also not enough to record that there is sufficient evidence of bad character on the proceeding; but the particular statements or parts of the evidence from which this conclusion is drawn, ought to be distinctly referred to in the order of the sessions judge, 154

THIEVES, KILLING OR MAIMING.

A chowkeedar, convicted of culpable homicide by having used unnecessary violence in apprehending a thief, sen-

tenced to be imprisoned for one year, and to pay a fine of rupees 10 in lieu of labor, 160

TRIALS, CONDUCT OF, BY THE SESSIONS COURT.

The postponement of a trial after its commencement by one judge, in order that only some remaining evidence may be taken before another judge, by whom the trial will be completed, and sentence passed, or the trial reported to the Nizamut Adawlut, is strictly legal, according to the terms and intent of Section 49, Regulation IX. 1793. The Circular Order No. 111, of April 2nd, 1812, is therefore of full force under Section 3, Regulation X. 1796, which declares the Nizamut Adawlut to be "empowered to prescribe the forms and conduct to be observed by the courts of circuit in all cases provided for by the Regulations agreeably to their construction thereof," 165

WOUNDING.

On a conviction of wounding, but without proof of deliberate intention to commit murder, so as to bring this crime within the penalties of Regulation XII. 1829, sentence passed of imprisonment for seven years with labor in irons, the wounding having been attended with aggravating circumstances, 188

A prisoner convicted of enticing a woman into a jungle, and leaving her there after severely wounding her, from some motive not clearly ascertained, sentenced to ten years' imprisonment, with labor in irons, 198

BUNDHOO DHANGUR

versus

FAGOO.

CHARGE—MURDER AND ARSON.

THE prisoner was tried, in December 1848, by the deputy commissioner of Hazareebagh, who, in submitting the proceedings of the trial, thus reported the case to the Nizamut Adawlut :

1849.

February 12.

"The prosecutor states that, in Aughum last, he was at a little distance from his house, in the farmyard, when his brother-in-law, Siboo, came and told him that the prisoner, Fagoo, had killed his (prosecutor's) wife, Musst. Oogne. On coming to his house, prosecutor saw his wife lying dead, with marks of three blows on the head and her skull broken. Information was then sent to the *thanah*, and the prisoner was apprehended by the *jemadar*, before whom prisoner confessed that he had killed the deceased with a wooden pestle. Prosecutor also saw that the house of Sona, the brother-in-law of the prisoner, and the houses of Sookur and Atwa, had been burnt down. Prosecutor does not know why this murder was committed : there had not been any previous quarrel or ill-will. The deceased was the mother of four children. The prisoner was always good tempered and sober.

A prisoner convicted of murder; but, as there were indications of the influence of insanity in his conduct, and the prosecutor had stated, in his first report of the transaction at the *thanah*, that the prisoner had once been out of his mind though he had subsequently recovered, it was thought sufficient to sentence him to imprisonment for life in the zillah jail.

"The prisoner pleads not guilty of the murder, but guilty of homicide and arson.

"No. 1 witness, Musst. Mungree, is the wife of the prisoner : her examination was, therefore, not continued.

"No. 2 witness, Kisun Dosad. One afternoon about 5 o'clock, witness being in his farmyard, saw that the houses of Sona, Sookur, and Atwa were on fire, and, on going there, saw that Atwa had apprehended the prisoner ; Sona was also holding him, and witness aided them. Prisoner had a lighted stick and a wooden pestle in his hands. The pestle is now in court. Afterwards, when the *jemadar* came, witness saw the body of the prosecutor's wife with three severe wounds on the head, and a portion of the brain protruded. The prisoner confessed the murder before the *jemadar*. Witness proves the *sooruthal*.

"No. 3 witness, Atwa. One evening at 5 o'clock, witness was in his farmyard, and noticed a great smoke and noise in the village. Witness ran towards his house and saw the prisoner setting fire to it. Witness asked prisoner why he did so, and prisoner then ran at him with the pestle which is now in court to strike him. Witness avoided him, and, escaping from his view, seized him. The prisoner struggled and threw him off and hit him on the side. But witness's brother, Sona, and Chytn and Kissun, coming up, seized and bound the prisoner. Efforts were made to extinguish the fire, but without effect. Witness

1849.

February 12.

Case of
FAGOO.

afterwards saw the body of the prosecutor's wife, Musst. Oognee : there were three severe wounds on the head. The persons who first apprehended the prisoner did not ask him any questions. The prisoner is of sound mind and was sober at the time. Witness does not know why the prisoner set the houses on fire.

" No. 4 witness, Sona, confirms the preceding statements.

" No. 5 witness, Chutturdharee, ..	} Prove the <i>soorut-hal</i> .
" " 6 " Horill,	
" " 7 " Bodhoo,	
" " 8 " Seetun,	
" " 9 " Sibooa, ...	
" " 10 " Sookur, ..	

" No. 11 witness, Chuttun, one evening saw the prisoner with a wooden pestle in his hands running to beat his own wife, Musst. Mungree. Witness asked prisoner why he did so, and prisoner ran at him. Witness ran away. Prisoner then set fire to Sona's house, then to Sookur's, then to Musst. Pukhnoo's, then to Atwa's. He drew out some thatch and lighted it. The houses and all the property they contained were completely destroyed, witness saw the prisoner set fire to the house. He is sane, and was then sober.

No. 12 witness, Chuttoo,	} Prove the mofussil confession of the prisoner.
13 " Sookun,	
14 " Gujoo,	
15 " Saul,	

No. 16 witness, Ramdial,	} Prove the confession of the prisoner before the principal assistant.
17 " Nankoo,	
18 " Allee Buksh,	
19 " Bukhori,	

" No. 20 witness, Lallit,	} Prove nothing material.
" " 21 " Kassie,	

" The confession of the prisoner is to the effect that his wife, Musst. Mungree, had quarrelled with the deceased, Musst. Oognee, and that he, therefore, struck the deceased three blows on the head with a wooden pestle. They had had previous quarrels, and quarrelled on the day of the murder. Prisoner went to the house of the deceased. Sona, Sookur, and Atwa are his brothers-in-law, and they had kept his wife from him for twelve years, therefore he set their houses on fire.

" The prisoner, in his defence, says that he intended to strike Musst. Mungree, but the blow fell on Musst. Oognee, and he does not know whether she was killed or is alive. He did set fire to the houses of his brothers-in-law, Sookur, Atwa, and Sona.

Lalla Gujraj Singh.
Lalla Emrit Lall.
Lalla Ramsubaye.

The jury, whose names are entered in the margin, find the prisoner guilty of wilful murder and arson.

"In this verdict I concur; and, seeing no extenuating circumstances, it is my duty to recommend that the prisoner, Fagoo, son of Chaita Dhangur, be sentenced to suffer death by being hanged by the neck till he be dead."

1849.
February 12.
Case of
FAGOO.

BY THE COURT.

MR. W. B. JACKSON.—"I can see nothing to extenuate the crime; and I would convict of the murder and arson, and sentence to death the prisoner Fagoo, son of Chaita.

MR. A. DICK.—"The whole of this prisoner's conduct and acts evince indubitably a strong presumption of insane tendency. He, without provocation or reason of any kind, first knocks down a defenceless woman, then a child of two years, then runs after his own wife to strike her, then after others, and, lastly, sets fire to three of his relatives' houses. The reasons he gives for all this are equally indicative of the same tendency—quarrels and disputes between his wife and deceased, and the keeping away of his wife from him for 12 years. The first never existed, according to the evidence of the prosecutor, prisoner's wife, and the witnesses; and the second is disproved from the facts of the case: both are the chimeras of prisoner's own brain. I would convict him of murder and arson, and sentence him, under all the circumstances, to imprisonment for life in the zillah jail, *vide* Bhuwun Singh's case, Nizamut Adawlut Reports, vol. I. p. 359, and of Ramtarun Thakore,* decided 18th December 1839, 21-Pergunnahs.

"I would further observe that the prosecutor, in his first deposition, at the *thanah*, of himself said that prisoner had formerly been mad.

MR. J. R. COLVIN.—"There is no proof that the prisoner was insane at the time of his committing the acts of which it is clear that he was guilty: but, as remarked by Mr. Dick, the prosecutor himself stated, in his deposition, before the *thanah* police, that the prisoner had once been out of his mind, though, at the time of the commission of the murder, he had recovered. It was a serious omission in the proceedings before the magistrate and before the sessions court, that no notice was taken of this first statement of the prosecutor, and no proper inquiry, such as that statement ought to have suggested, was made from the prosecutor and others in reference to it.

"The evidence, as recorded, does not satisfy me as to the existence of such deliberate malice as the motive of the murderous attack, as would, in my opinion, require or justify a capital sentence.

"I concur in the sentence proposed by Mr. Dick, and would communicate to the deputy commissioner and the principal assis-

* Not reported.

1849.

February 12.

Case of
FAGOO.

tant the remark above made, in respect to the absence of any notice on their part of the prosecutor's first statement regarding the prisoner's previous insanity."

MR. A. DICK.—"In the propriety of this I fully concur."

In accordance with the opinions of Messrs. Dick and Colvin, the prisoner was sentenced to be imprisoned for life, with labor and irons, in the Hazareebagh jail.

MUSST. AUDOREE

versus

HULLODIUR SYCE.

CHARGE—MURDER.

1849.

— March 30.

The prisoner convicted of deliberate murder; and as there was no question of his perfect sanity, and nothing in his favor but the assertion in his confessions of some fanciful suspicion as the motive for his crime, sentence of capital punishment passed against him.

THE prisoner was charged, at the sessions held in zillah Midnapore, for January 1849, with murder, in having severely wounded his wife, Musst. Bamee, with an axe and *khoorpah*, and thereby caused her death.

The sessions judge, in his letter of reference, thus reported the facts of the case :

"The prisoner pleaded *guilty* in this court, and offered no defence, nor gave any reasons for murdering the deceased, his wife. An eye-witness stated that he saw the prisoner sitting on the deceased's chest and striking her; that the prisoner threatened him with an axe, but seeing he was not alarmed, ran away, and witness gave the alarm to others who apprehended him. Other witnesses, who did not see the murder, heard the prisoner beating his wife, and, on reaching the spot, saw the deceased dreadfully wounded and a bloody axe lying near her. Those who apprehended the prisoner deposed that he had a bloody spud in his hand, appeared in a very excited state, and admitted having killed his wife. The assessors returned a verdict of guilty of the charge entered in the indictment.

"The deceased is said to have been about ten years of age, and had resided with her husband, the prisoner, only 20 or 25 days.

"In his confession to the darogah, he says he killed his wife, because she had administered some medicine to him, at the instigation of another person, about 13 months ago, which medicine caused a noise in his stomach when empty. The same confession was repeated to the magistrate.

"In this court he offered no defence; and as I see no extenuating circumstances to render the prisoner a proper object of mercy, I consider a sentence of capital punishment should be passed upon him."

BY THE COURT.

"MR. W. B. JACKSON.—"I convict the prisoner, Hullothur, of the murder of his wife, and would sentence him to suffer death."

MR. A. DICK.—"It is manifest, from the tenor of the prisoner's confession, and from the non-existence of either of the causes which he says incited him to commit the dreadful deed, that he

acted under delusion. I consider this a valid plea for investigation.* I would therefore sentence the prisoner to imprisonment for life, with labor, in the district jail."

MR. J. R. COLVIN.—"This is a case of deliberate and brutal murder, perpetrated by the prisoner, Hullothur, upon his wife, a girl of only about ten years old. There is no question as to his perfect sanity; and his assertion, in his confessions, of some fanciful suspicion as the motive for his crime, cannot, in my judgment, be admitted as an extenuation of it."

"I concur with Mr. Jackson in the conviction of Hullothur for murder, and in the sentence of capital punishment which he has proposed."

Messrs. Jackson and Colvin having concurred in sentencing the prisoner to death, he was accordingly ordered for execution.

1849.

March 30.

Case of
HULLODHUR
SACE.

NIM CHAND MOOKERJEA

versus

(1) MOTEEOOLLA SHAIK SIRDAR, (2) SHAIK SOLIM SIRDAR, (3) PANAOOLLA SHAIK, (4) RAMCHAND SIRDAR, (5) OKOOR HODAR, (6) BHOLYELUSKUR, (7) SOROOP MUNDUL GADA, (8) SIDDESSUR PADE, (9) HULLODHUR SIRDAR, (10) KAWOOREE GYAN, (11) BASODEB LUSKUR, (12) MADHOB DAS, (13) SOROOP LUSKUR, (14) TARACHAND CHUKUR-BUTTEE, (15) LUKHEENARAIN CHUKURBUTTEE, (16) THAKOORDASS KURMOKAR, (17) BIHM HAREE, (18) GOVIND MUNDUL, (19) BIHUGWAN NAPIIT, (20) CHINTAMONEE HAJRAH, (21) BUNMALLEE GHOSE PESHKAR, AND (22) KOMLAKANTH AUDIT. •

CHARGE—DACOITY WITH MURDER.

THE additional sessions judge of the 24-Pergunnahs, in his letter of reference, dated 20th December 1848, stated the charges against the prisoners as follows:

"In the 1st count, prisoners Nos. 1 to 20, with dacoity with murder and arson; in the 2nd count, prisoners Nos. 21 and 22,

1849.

April 13th.

It does not
invalidate the
evidence of
principal of-
fenders con-

fenders, made approvers, that they have been admitted to be takers to the intentions of Regulation X. of 1824.

1819.

April 13.

Case of
MOTEROOLLA
SHAIK SIR-
DAR and
others.

with procuring and causing, by counsel or command, the murder of Kalleemohun Mookerjea in pursuance of a preconcerted plan to commit the same, and robbing at his dwelling ; in the 3rd count, prisoners Nos. 21 and 22, with being accessaries before the fact to the murder of the abovenamed and dacoity at his dwelling ; in the 4th count, prisoners Nos. 7, 9, 10, 14, and 17, with being actively concerned in the murder of the abovenamed, in prosecution of robbery ; and in the 5th count, prisoners Nos. 1 to 3 and 7 to 16, with having property obtained by the above dacoity in their possession."

The circumstances of the case were thus described :

" A dacoity took place on the 13th August last, in Narainpore, in the house of Kalleemohun Mookerjea, who was the salt darogah at that place. The darogah's person was much burnt, and his house was set on fire. His friends attempted to bring him for medical aid to Calcutta, but he died by the way. Property to the value of rupees 35,330 is said to have been plundered. Narainpore is situated in the thanah of Ramnuggur, but is about 4 coss distant from it ; and the first notice of the dacoity that was carried there was taken by the chowkeedar, who arrived at the thanah about 9 o'clock P. M. on the 14th August. This delay in informing the police of the circumstance took place notwithstanding that the plaintiff (who is a nephew of the deceased darogah) and another man depose that they recognised two of the dacoits, who have since been pardoned and admitted to give their evidence as witnesses. The darogah of Ramnuggur appears to have arrived at Narainpore on the 15th August, and to have taken the plaintiff's deposition on that day. In the meantime the darogah of Maniktullah was deputed by the magistrate to investigate the case. It does not clearly appear when the dacoit, Rutton Das, was apprehended. He is the father of the two dacoits who were said to have been recognised, and he, together with his sons, has been admitted as a witness. On the 17th August, he made a deposition, under a promise of pardon, and gave a full account of the dacoity ; and on the same day, in consequence of his deposition, six persons, who live in the neighbourhood, were apprehended. It is doubtful whether the unsupported evidence of the persons, who stated that they recognised the now pardoned dacoits, would have been sufficient for their conviction, more particularly as the circumstance of their having been recognised was kept a close secret until the police arrived ; and it might be feared whether the dacoits would speak the truth after they had been apprehended and were in dread of punishment, but their depositions and that of their father are so circumstantial that there can be no doubt of their having themselves been all engaged in the dacoity. According to the evidence of the pardoned

dacoit witnesses, the crime was brought about in the following manner. The prisoner Bummallee Ghose, who is the peshkar at the Government salt golah at Narainpore, and Komolakanth Audit, who is a general agent, living at the same place, engaged Rutton Das and his sons, Mothoor and Petumber, but especially Mothoor, (who evidently is sharp-witted and shrewd,) to get a gang of men, and with them to murder Kalleemohun Mookerjee, the salt darogah, (although Rutton's evidence does not shew that murder was the object,) to plunder his house, and to set it on fire. Rutton and Mothoor give a long and full account of their transactions and interviews with the peshkar and with some of the dacoits; and they state how a gang had assembled previously to the dacoity, but were prevented by the peshkar from committing it, owing to the absence of the darogah. They also state how a gang was again assembled, in which were many persons different from those previously assembled, and how the dacoity was committed, and the darogah maltreated in such a manner that he soon died: they give the particulars, which they observed while they stood at a window without being themselves actively engaged in the dacoity. It is also shewn how Mothoor Das went off with the main body of dacoits, how they crossed the river, which flows by Narainpore, and how much of the spoil was divided among the dacoits. Although I have no doubt whatever that the pardoned witnesses were dacoits, which is shewn by circumstantial evidence, besides their own depositions, yet I think their evidence may have been given with some reservation as to their own degree of guilt. They state that they took no active part at the time of the dacoity, but they were the instruments by which it was brought about. Now the two sons of Rutton Das are stout active young men, and the object of the dacoity was to kill the darogah; but it does not appear what advantage would be gained by communicating that object to the greater number of the dacoits, who came from a distance; and as the latter could not have been known to, and recognised by the darogah, and did not know him, they could have had no object in plotting his death and were little likely to murder him from sudden impulse. It is highly improbable that the leaders and active arrangers of the crime should have remained idle and looked on, and left the main object of the dacoity to be performed by others who were less interested in it, even if they were at all interested in it. Indeed, there is reason to suspect that these witnesses were themselves the murderers of the darogah, and, if so, it must have been necessary for them to shift their guilt from themselves to some other persons; and although the persons, who, according to their depositions, maltreated the darogah, might have had a share in doing so, yet I do not consider that this part of their evidence can be entirely

1849.

April 13.

Case of
MOTEEGOOLLA
SHAIK SIR-
DAR and
others.

1849.

April 13.

Case of
MOTEEOOOLA
SHAIK SIR-
DAR and
others.

trusted, and it is not supported by any circumstances. It may also be observed that three of the men who are said to have maltreated him, viz., Hullothur prisoner and Kawooree Gyan and Tarachand, are of the number of those whose names not one of the pardoned dacoits could or did give up when they first made their depositions before the police. I do not therefore find the 4th count of the charge proved against any prisoner.

“The men who came from a distance were without murderous arms, and were satisfied with a small portion of the plunder; the valuable papers were left in the charge of Moteeoola with the knowledge of the pardoned men, to whom he was ready to give them up on demand; and as they could have no object in committing murder, I doubt not only whether they had any intention to do so, but whether the greater number of them were aware that the darogah had been seriously maltreated. The distance that some of the prisoners live from Rutton Das and his sons is a great reason why the evidence of the latter should be believed, first, against those whose names they were able to remember when they first made their depositions, and whose names they would not have known had they not been connected with this dacoity, and next, against those whom they afterwards pointed out, for, if they had lived nearer, they would, in greater probability, have known them by name, and their afterwards having pointed them out would have carried suspicion with it, even although circumstantial evidence supported their testimony.

“The following are my observations on the evidence against each separate prisoner.

“Moteeoola Shaik Sirdar, son of Mehir Ghazee or Mehiroolla Shaik. He lives at Bunmaleepore, which is about three-fourths of a coss from the house of the pardoned dacoits. The witness Rutton Das has known him 10 or 15 years, and states that he works at the salt golahs. The witness Mothoor Das has known him by sight and name, and has met him at the *hdl*. Both of these witnesses state that the prisoner was one of the dacoits. He made a confession at Narainpore between 8 and 9 o'clock P. M., on the 17th August, having been apprehended during the daytime; and on the evening of the 18th August, he confessed before the magistrate that he was one of the gang of dacoits, and that he took charge of part of the plunder. There does not appear to have been any particular reason for taking his confession at night. It is also proved that he was apprehended in his own plot of reeds, very near his own house, where he had gone with the pardoned dacoit, Rutton Das, to produce a box in which were very valuable papers, which had been plundered, including Government promissory notes, which box was found in the plot of reeds, locked, and to all appearance it had never been opened after it had been plundered. Rutton had been sent

forward by the police, and had ensnared the prisoner into pointing out where the box was hid, and the police were at hand to seize both him and his spoil together. On looking over the record of the case, it will be seen that Rutton and his sons, when they made their depositions with the hopes of pardon, each took the name of this prisoner, although on the trial Petumber failed to do so. I shall have occasion to remark the same or similar circumstances in my observations on the evidence against most of the prisoners: there is no reason for the discrepancy apparent to me. I see no reason for believing the evidence for the defence, and I find the prisoner guilty of the first and fifth counts.

"Shaik Solim Sirdar, son of Waddy Shaik. He lives at Jehanabad, only 10 or 15 russees from the scene of the crime, and a quarter or half a mile from the pardoned dacoits, of whom both Rutton and Mothoor have known him 10 or 12 years, and both of them state that he was one of the dacoits. He appears to have been apprehended on the 17th August, and on the 18th he made a confession of his guilt before the police. Parts of the evidence of the witnesses, however, make it very doubtful whether the confession was voluntary or not, and it was not repeated before the magistrate. Nothing was found in his possession, but money amounting to rupees 17, part or the whole of which was claimed by his mother, and no part of which is capable of recognition. I therefore acquit him of the 5th charge. He lives on the side of the river on which the dacoity took place; and the pardoned dacoit, Mothoor Das, who crossed the river and went off with the main body of dacoits, states that this prisoner also crossed the river but went back again. This circumstance is confirmed by the evidence of the boatman, Kangalee Manjee, who recognised this prisoner as one of the gang of men who crossed the river in his boat after the salt darogah's house had been set on fire. I must make the same observation as in the above case, viz. that Petumber, in his evidence on the trial, did not take the name of this prisoner, although he had done so in his first deposition before the police. In the defence this prisoner is said not to have been on good terms with Rutton. I find him guilty on the 1st count, although he has endeavoured to prove an *alibi*.

"Panaoola Shaik, son of Rupee Shaik. This prisoner lives at Narainpore, only half a mile from Rutton Das, who has known him for five years, and Mothoor states that he has known him two or three years, and that he lives three-quarters of a mile from him. Both the abovesaid witnesses state that the prisoner was among the dacoits. He was apprehended on the 18th August, and on the same day he made a confession before the police, and on the evening of the same day he acknowledged before the magistrate that he went forth with the gang, that he

1849.

— April 13.

Case of
MOTEOOLLA
SHAIK SIR-
DAR and
others.

1849.

April 13.

Case of
MOTEOOLLA
SHAIK SIR-
DAR and
others.

was in attendance during the dacoity, and that he got some of the spoil, of which he produced four rupees, which were hid in a bamboo used as a stanchion in his house, also five different articles of dress which he had hid in an earthen vessel, which was covered with soil, behind his house. The witness Petumber did not take this prisoner's name on the trial, although he had done so in his first deposition before the police. He has attempted to prove an *alibi*, but I find him guilty on the first and fifth counts.

“Ramchand Sirdar, son of Lukhun Sirdar. This prisoner lives at Jehanabad, which adjoins Narainpore. The witness Rutton Das says that he sells cloth, and that he did live at Koregachea, but that he had come to his neighbourhood four months before the dacoity took place, and that he calls Rutton his *dhurumbap*. Mothoor Das states that he had known the prisoner for eight months, and that he (the prisoner) had lived in the witness's house. Both of these witnesses state that the prisoner was one of the dacoits. He is said to have been apprehended on the 17th August, and to have confessed his guilt the next day before the police, but from the evidence of the witnesses it is doubtful whether it was done voluntarily. On the night of the 18th he made a deposition before the magistrate, but it is more like an accusation of others than a confession of guilt. Petumber did not take his name on the trial, although he had done so in his first deposition before the magistrate. I see no reason for supposing that Rutton and Mothoor have perjured themselves in their evidence against this prisoner, and I believe their evidence to the effect that he was one of the dacoits, and I find him guilty on the first count, although he has endeavoured to prove an *alibi*.

“Okoor Holdar, son of Khawoo Singh. This prisoner lives at Narainpore, about a mile and half from Mothoor Das, who has known him five or six years: he works at the salt golahs. This one witness states that the prisoner was one of the dacoits. He was apprehended on the 17th August, and the next day he made a confession before the police that he was one of the gang and that he got a portion of the spoil. In the evening of that day he made a deposition before the magistrate; but it is of such a nature that I doubt whether he expected it could be used as a proof of his guilt. Both Rutton and Petumber took his name in their first depositions before the police, but they failed to do so on the trial. He said that Mothoor owed him a grudge, but he has not proved it by any witness, or asked the question of any witness whom he has summoned. I see no reason for disbelieving the evidence of Mothoor, or for believing the *alibi* which he has attempted to prove, and I find him guilty on the first count.

“Bholye Luskur, son of Mungle Luskur. This man also lives at Narainpore, his house is a mile and half from that of

Mothoor Das, who has known him two or three years, and who states that he was one of the dacoits. He is said to have been apprehended on the 18th August, and to have made a confession before the mofussil police on the same morning, viz. that he was one of the dacoits, and that he got two rupees as a portion of the spoil. In the evening of the same day he made a deposition before the magistrate; but it is more like an accusation of others than a confession of his own guilt, except it be that of privy to the dacoity. Both Petumber and Rutton failed to take this man's name on the trial, although they had done so before the police. He has attempted to prove that he had a feast at his own house on the evening of the dacoity. But I see no reason for disbelieving the evidence of Mothoor; and the depositions which the prisoner made on two occasions, on the same day that he was apprehended, confirm my belief in it. I find him guilty on the first count.

"Soroop Mundul Gada, son of Ramnath Mundul. This prisoner lives at Hurrecpore. Rutton Das knew him only two months before the dacoity took place. Mothoor Das once went to his house to speak to him about this dacoity: he cannot remember the name of the village, but thinks it is called Chundumpokren, and says it is six or seven coss from his own house. The witness Petumber Das first saw the prisoner about 25 days before the dacoity took place, and saw him again on the day of the dacoity. All three of the abovenamed witnesses state that the prisoner was one of the dacoits. Some property, including a *shawl* which is valued at 250 rupees, was found in the house of one Sukteeram; and it appears from the evidence of that man and of his wife that this prisoner and the two following, viz. Siddessur Pade and Huloolhur Sirdar, brought the property there and hid it. I do not find in the record of the magistrate's office what was the cause of the search of the house of Sukteeram. All the three witnesses took this man's name when they made their first deposition before the police; and from his being so well known, and from the evidence, I believe him to have been the sirdar of the men who came from his neighbourhood. He is a large powerful man. I find him guilty on the 1st count, although he has brought witnesses to prove an *alibi*, and that he was not on good terms with Sukteeram, and that there was a feud between his zemindar and that of Rutton and his sons.

"Siddessur Pade, son of Muktearam Mundul. This prisoner lives at Chundessur, which is close to Hurrecpore. The witness Mothoor Das states that he first became acquainted with him about 25 days before the dacoity took place, and that he had seen him two or three or four times; that he had been at his house, which is about two russees from that of Soroop. He also states that he was one of the dacoits. None of the three pardoned witnesses (not even Mothoor Das) could take this man's name when they

1849.

April 13.

CASE of
MOTTEGOOLLA
SIR-
DAR and
others.

1849.

April 13.

Case of
MOTEEGOOLLA
SHAIK SIR-
DAR and
others.

first made their depositions before the police ; and the evidence against him is Mothoor's remembrance of his person, and Sukteer-ram and his wife stating that the property, which was found in their house, as described above, was brought there by him and others. I see no reason for discrediting either account ; and as each sup-ports the other, I find the prisoner guilty on the first count.

"Hullothur Sirdar, son of Rutton Sirdar. This prisoner lives at Hurreepore, the same village in which the prisoner Soroop Mundul Gada also lives. The witness Mothoor first saw him about 25 days before the dacoity took place. He was never at the prisoner's house, but had seen him two or four times. The witness Petumber saw the prisoner on the night that the failure to commit the dacoity occurred, and again on the night that it took place. Both these witnesses depose that the prisoner was one of the dacoits. He is said to have been apprehended on the 19th August, and he made a confession on the 20th ; but as the women of his family were apprehended at the time and taken to the thanah, and he did not repeat his confession before the magistrate, I place no confidence in it. Neither Mothoor nor Petumber could remem-ber this prisoner's name, when they first gave their evidence before the police, even if he had been introduced to them by name ; but their evidence is supported by that of Sukteer-ram and his wife that this man also was with Soroop Mundul Gada when he came to their house to deposit some of the plunder. Witnesses have been brought forward to prove an *alibi* ; but there is no fact or circumstance to corroborate what they say. And as I see no reason to disbelieve the evidence for the prosecu-tion, I find the prisoner guilty on the first count.

"Kawoorree Gyan, son of Dootteer-ram Gyan. This prisoner lives at Chundecpore. The witness Mothoor first saw him about 25 days before the dacoity took place : he was once at the prisoner's house, which, he says, is near that of Soroop Mundul Gada. The witness Petumber saw the pris-oner on the night that they failed to commit the dacoity, and again on the night on which they succeeded in committing it. Both of these witnesses state that the prisoner was one of the dacoits. He is said to have been apprehended on the 20th August, and he confessed his crime before the police the next day, when he deposed that he was at the dacoity, and got four rupees and different garments as his share of the spoil. When the police went to his house, he and his wife were absent, but his young daughter pointed out where her mother had hid some of the plunder in an earthen vessel sunk in some water near their house, which was taken out of the water in the presence of wit-nesses. Neither of the witnesses who recognised the prisoner men-tioned his name when they first gave their evidence before the police, and the confession was not repeated before the magistrate.

The prisoner has also endeavoured to prove an *alibi*; but I consider the evidence to the recognition sufficiently supported by some of the property, which had been plundered, having been pointed out by his little daughter in such a place. I therefore find the prisoner guilty on the first and fifth counts.

“Basoodeb Luskur, son of Heeroo Luskur. This prisoner lives at Bannoo, in the thanah of Bankipore. The witness Rutton Das has seen him twice before the dacoity, and the first time was two months before it took place. The witness Mothoor says that the prisoner lives at a place called Hutuk, and seven or eight coss from his own house, and that he has been at the prisoner's house, which is three-quarters or one coss from that of Soroop, and that he first knew him about 25 days before the dacoity took place. The witness Petumber saw the prisoner both on the night that they failed to commit the dacoity, and on the night on which they committed it. All the above three witnesses state that the prisoner was one of the dacoits. He is said to have been apprehended on the 19th August, he confessed before the police on the 21st of August, and on the 22nd he repeated his confession before the magistrate, stating that he participated in the spoil. The portion of clothes which he obtained was recovered from the house of his sister, to whom he had committed it. A man, viz. the witness Kangalee Manjee, in whose boat the dacoits crossed the river, recognised this prisoner as one of the gang. The witness Mothoor is the only one of the three witnesses who took the prisoner's name in the first deposition before the police; but considering the distance that they live from each other, and the short acquaintance that the witness must have had with the prisoner, which could have been brought about only as they were together connected with the dacoity, and there being no intimation of enmity between them, I should have thought Mothoor's evidence alone sufficient for the conviction of the prisoner, even if he had not confessed his guilt, and plundered property had not been found in his relation's house, I find him guilty on the first count.

“Madhob Das, son of Ramtonoo Das. This prisoner lives at Baroepore. He is a nephew of the witness Rutton Das, who, as well as his son Mothoor, recognised him among the dacoits; and from their near relationship there can be no doubt but that they were acquainted with his person. He is said to have been apprehended on the 19th August. On the 20th he made a confession before the police that he was one of the dacoits and received a part of the spoil; and before the magistrate he deposed that he was privy to the dacoity and received and made away with a part of the spoil. He was recognised by Kangalee Manjee, in whose boat some of the dacoits passed the river, as one of them; and he is said by one Ranchunder Luskur, another witness, to have deposited his share of the plunder at that man's house; but the witness to prove it is

1849.

April 13.

Case of
MOTEOOLLA
SHAIK SIR-
DAR and
others.

1849.

April 13.

Case of
MOTEEGOOLLA
SHAIK SIR-
DAR and
others.

of a different caste from Madhob, and lives about a coss from him, and had never visited him, so that, although the property was found in the possession of the witness, there would be room for doubt whether Madhob entrusted the property to him, if the man's evidence were unsupported; it is, however, shewn that Madhob acknowledged at the time it was found that he had left it with that man. Although only Rutton and Mothoor have stated on the trial that the prisoner was one of the dacoits, yet I find that Petumber as well as the others took his name, when they first gave their evidence before the police. Considering all the evidence against him, I find him guilty on the 1st count, although he has attempted to prove an *alibi*.

"Soroop Luskur, son of Ramdhon Luskur. This prisoner lives at Hotur. The witness Mothoor states that he had been at the prisoner's house, that he first saw him about 25 days before the dacoity took place, and that he had seen him two or three times, and that he was at the dacoity. The prisoner made a confession in the mofussil, but the witnesses to it do not remember with any certainty one man's confession from another's. However, he produced eight rupees; and the witnesses, who were present when he did so, state that he said he got the money at Narainpore. As Mothoor took the prisoner's name when he was first apprehended, and Hotur is many coss from Narainpore, and there is no suspicion that the two men should have known each other, or either have heard of the other's name except as he was connected with this dacoity, I believe Mothoor's deposition, although the prisoner has attempted to prove an *alibi*; and I find the prisoner guilty on the first and fifth counts.

"Tarachand Chukurbuttee, son of Ramlochan Chukurbuttee. This prisoner lives at Hotur. The witness Mothoor Das had seen him three times before the dacoity took place, and he first saw him 25 days before it occurred, at the house of Madhob. The witness Petumber first saw him on the night that they failed to commit the dacoity, and he saw him again on the night on which they committed it. Both of them state that he was one of the dacoits. In the mofussil he confessed that he went with the gang of dacoits, and that he received five rupees as part of the spoil. It appears, however, that he produced only four rupees at his house, and said nothing about the fifth: this discrepancy should have been cleared up; but although it weakens the case against him, it does not invalidate the testimony of the witnesses to the recognition, if confidence can be placed on it. On examining the record, I find that not one of the three pardoned dacoits could remember this man's name, when they made their confessions with the hope of pardon. He is described as the brother of Lukheenarain Chukurbuttee by the witness Mothoor. Now Lukheenarain Chukurbuttee appears to have two brothers, viz. this prisoner and

Kishun Mohun, but considering that the witness could not have known any thing of either Lukheenarain Chukurbuttee or his brother, except as they were connected with this dacoity, and that he afterwards pointed him out as the man he had so described, I believe his evidence, and find the prisoner guilty on the 1st count, although he has endeavoured to prove that he was at his own house on the evening of the dacoity.

“ Lukheenarain Chukurbuttee, son of Ramlochan Chukurbuttee. This prisoner is a son of the same man as the preceding prisoner: he also lives at Hotur. The witness Mothoor Das first saw him about 25 days before the dacoity took place at Bancepore *hdt*, and had seen him two or three times before it took place; and he states that he is one of the men who committed the dacoity. He confessed in the mofussil that he was one of the gang of dacoits, and that he received two rupees and different articles, which were a part of the plunder, but none of these articles were found in his house, and, according to his confession, he had disposed of them. As Mothoor took his name when he first made his deposition before the police, and the two live so far apart, and I see no way in which Mothoor could have known the prisoner's name except as he was connected with the dacoity, I find him guilty on the first count, although he has called witnesses to shew that he was at his own house on the evening of the dacoity.

“ Thakoorodoss Kurmocar, son of Ramjeebun Karmocar. This prisoner lives at Chundumpokrea. The witness Mothoor Das had seen him 7 or 8 times before the dacoity took place, and he saw him again on the night of the dacoity. The witness Petumber mistakes the prisoner Govind Mundul for this man. He appears to have been apprehended on the 21st of August, and to have made a confession the same day in the mofussil to the effect that he was one of the dacoits, and that he received 5 rupees as his share of the spoil, and the next day he repeated the confession before the magistrate. Witnesses state that he brought out 9 rupees, of which 5 are supposed to be plundered money. None of the pardoned dacoits mentioned the name of this prisoner in their first deposition before the police, and consequently I could not give entire confidence to the evidence of either Mothoor or Petumber. The confession before the magistrate cannot, I think, be objected to, and as it is supported by the evidence of the witnesses and the locality of his home with respect to other prisoners, I find him guilty on it of the crimes specified in the first and fifth counts.

“ Bhim Harce, son of Kawoorce Belara. This prisoner also lives at Chundumpokrea. The witness Mothoor Das saw him once before the dacoity, viz. on the night when they failed to commit it. The witness Petumber states that he saw him once about 25 days before the dacoity took place. Both of them state that he was one of the dacoits. He is

1849.

-- April 18.

CASE OF
MOTEGOLLA
SHAIK SIR-
DAR and
others.

1849.

April 13.

Case of
MOTHEOOULLA
SHAIK SIR-
DAR and
others.

said to have been apprehended on the 21st August, but this is a mistake. He made a confession in the mofussil on the 20th August, stating that he was one of the dacoits and that he obtained 8 rupees as a part of the spoil, but he did not repeat his confession before the magistrate. As Mothoor took his name when he first made his deposition before the police, I trust his evidence on the trial that this man was one of the dacoits, and I find him guilty on the 1st count, although he has endeavoured to prove an *alibi*.

“Bhugwan Napit, son of Ramhurree Napit. This prisoner lives at Tapokrea. The witness Mothoor Das first saw him seven or eight days before the dacoity, and recognised him again among the dacoits. He is said to have been apprehended on the 21st August, but this is a mistake; for he confessed before the police on the 20th August that he committed the dacoity and got two rupees and two *dhooties* as part of the spoil. I find him guilty on the first count, on the evidence of Mothoor Das, as he took his name when he first made his deposition, and could have known the prisoner only as having been connected with the dacoity. ‘The prisoner would prove an *alibi*, but I see no reason for believing his witnesses.

“Chintamonee Hajrah, son of Ramjoy Hajrah. This prisoner lives at Hotur. The witness Rutton Das says he knew him two months before the dacoity, but was never at his house. The witness Mothoor says he first saw him 25 days or a month before the dacoity at Madhob’s house, and that he had met him five or six times before the dacoity took place. The witness Petumber had seen him two or three times before the dacoity, and says that the prisoner had been at their house. All these three witnesses state that he was one of the dacoits. He is said to have been apprehended on the 21st August, and he made a confession the same day before the police, in which he deposed that he was at the dacoity, and got four rupees as his share of the spoil. Kangalce Manjee also states that this man was one of those who crossed the river at Narainpore, in his boat, on the night on which the dacoity took place. The evidence against him is strong, and he appears to have been well acquainted with the object of the meeting of the gang. Both Mothoor and Petumber took his name when they first made their deposition before the police, and I see no reason for disbelieving their evidence. The prisoner brought several witnesses to prove an *alibi*, but there are no facts to shew that what they say is true. I convict him of the first charge.

“Bunmallee Ghose Peshkar, son of Parbuttee Churn Ghose, and Komlakanth Audit, son of Kisto Mungul Audit. There can be no doubt about these men being known to the pardoned witnesses, who state that they procured and caused by council and command the perpetration of the dacoity and murder. The plaintiff, in his evidence given on the 15th August, stated

that the deceased darogah, while he was suffering from the dacoits, accused or suspected these men and called out their names. It appears that there had been a rumour among the followers of the deceased darogah, that such a dacoity as this was contemplated: it most probably arose from the late deputy magistrate, Beneemadhub Chatterjea, having put the salt darogah on his guard. That rumour may have caused the late darogah to have called out the names of the prisoners, and especially the name of Bunmallee, or it may have caused the plaintiff to say he did so. It is not probable that Rutton and his sons should have got up so serious a dacoity, in the house of one who was almost surrounded by persons connected with the salt golah, unless they were abetted by some influential person: neither he nor his sons can read or write, and the only spoil that they obtained, and which they could tell the value of, was 19 rupees, which must have been far too small a share if they were the originators of, as well as the leaders in, the dacoity. There was also a box containing valuable papers, which were in the charge of Moteeoolla, and which he was prepared to give up to Rutton on demand. It had never been opened, and it is not likely that men who could not read or write should have taken much notice of such property, unless they had acted under the direction of, or had the power of applying to, some superior and more learned person for guidance. There is the evidence of a prisoner, Mudoosoodun Sirdar, who was in jail at the time that the dacoity took place, that he had been applied to, to take a part in the dacoity, and that he understood that the peshkar was getting up the dacoity. A spy called Juggessur, one of the witnesses, had informed the late deputy magistrate, Beneemadhub Chatterjea, that this dacoity was likely to take place, and a memorandum of the circumstance was made by his direction before him, and was found on the 16th August among the papers which were left by him. The persons therein said to be about to get up the dacoity are the peshkar, Rutton Das, and Mothoor Das; they are called *ghuttuks*, and it is proved that the paper was written in the presence of the late deputy magistrate before the dacoity took place. I must, however, observe that a copy of it was received by the darogah before he took the depositions of Rutton and his sons. There is evidence to shew that the deceased salt darogah had, in May last, recommended the salt agent to do without the services of Bunmallee, who is by him called the head mohurir, although he is more frequently called the peshkar; also that in June he brought to the notice of the salt agent an order by which Komlakanth Audit had been prevented from weighing salt at the golahs on account of other people. There is also evidence to shew that, in May last, Bunmallee Ghose brought a charge against the deceased salt darogah, which, if proved, would have caused him to be dismissed from his appointment. There

1849.

April 13.

Case of
MOTEEOOLLA
SHAIK SIRDAR and
others.

1849.

April 13.

Case of
MOTEROOLLA
SHAIK SIR-
DAR and
others.

can therefore be no doubt but that enmity existed between the late darogah and the peshkar. Komlakanth Audit has attempted to shew that Rutton has enmity against him; but I think he has rather shewn that Rutton, as his debtor, was bound to obey his orders. The evidence against Komlakanth is not so strong as against Bunmallee Ghose, neither is it shewn for what cause enmity of so deep a nature existed between Komlakanth and the late darogah. I can find no cause why the plaintiff or the police should have caused the witnesses to take the name of this man, although the deposition of the informer, Juggessur, might have induced them to make the prisoner take the name of Bunmallee. On the whole, I think it is proved that Komlakanth Audit did conspire with Bunmallee Ghose in procuring and causing others to commit the dacoity, and accordingly I find them both guilty on the second count, in which is embraced the third count.

“ I think that Bunmallee Ghose is the most culpable of all the prisoners, particularly when it is considered that he held so high an office under the Government, and that it was the murder of his superior officer that he procured, and I recommend that he should be punished with death. I think that the next degree of guilt attaches to Komlakanth Audit and to Soroop Mundul Gada, the former for having contrived the dacoity together with Bunmallee Ghose, and the latter for having been the leader of that part of the gang of dacoits who came from a distance, and I would punish each with banishment beyond sea for life. Each of the others, I think, should be punished with 14 years’ imprisonment with labor in irons.”

BY THE COURT.

SIR R. BARLOW.—“ The principal evidence against the prisoners consists :

1st. In the evidence of the three eye-witnesses, Rutton Das and his two sons, Petumber and Mothoor, all of them approvers.

2nd. The alleged confessions of certain prisoners.

3rd. The finding of certain portions of the plundered property, which belonged to the deceased. I allude to the property capable of recognition.

“ It is quite clearly established by the mofussil statements of the three approvers, as well as by their depositions before the magistrate and in the sessions court, that for some weeks previously they contemplated the dacoity and planned it; that they were the parties who collected the gangs on various occasions previously, when they failed; that the dacoits started from their house on the night of the dacoity; that they accompanied the dacoits to the house of the deceased, and were present on the spot at the time he was murdered; and that they received part of the money

then carried off. Under the provisions of Section 3, Regulation X. 1824, magistrates are empowered 'to tender a pardon to one or more persons (not being principals,)' in cases of murder, gang robbery, &c., and in Section 4 of the same Regulation, magistrates are enjoined 'to be cautious not to tender pardon to principal offenders.' Upon the present occasion the Maniktullah darogah, as appears by the depositions of the approvers, promised to intercede with the magistrate on their behalf; and the magistrate, upon his report, to the effect that there was no hope of the apprehension of the offenders with the property unless Rutton and his two sons were allowed to give evidence as approvers, admitted them as witnesses on the 25th and 26th August, recording his reasons in his proceeding of the last mentioned date.

"Though the active, the leading part taken by Rutton and his sons in this affair, from first to last, unquestionably brings them within the class of *principal offenders*, to whom pardon should not have been offered under the law quoted, yet their evidence is not *therefore* inadmissible.

"The exclusion of principal offenders in Sections 3 and 4 appears to be a provision that such persons should not escape justice by being admitted witnesses. The exception is not to the testimony they may give as in itself improper to be received under the law. Such testimony, however, is open to the greatest suspicion, and should be admitted with every precaution that too much weight is not attached to it, if unsupported.

"The evidence of these approvers is, to a certain extent, corroborated in its bearings on some of the prisoners; not so, however, as it affects others of the parties charged. All the prisoners from No. 1 to No. 20, have been identified by one or more of the approvers, as having been present on the occasion of the darogah's murder. They were well acquainted with some of the prisoners, and had two or three times held consultations with others of them for the purpose of planning this dacoity.

"On the subject of the evidence derivable from the profusil confessions, I have to remark that they are not worthy of much confidence, unless confirmed before the magistrate or substantiated by some collateral proof,—the more so as I am not satisfied that some of them were not obtained by irregular proceedings of the police.

"Some of the property recovered from the prisoners is capable of recognition. Upon others rupees only were found, which of course cannot be sworn to.

"In collating the proceedings before the police, and the evidence before the magistrate, with that taken in the sessions court, it will only be necessary to notice particularly those portions of the statements and depositions in which, on comparison, material

1849.

April 13.

Case of
MOTEROOLLA
SHAIK SIB-
DAR and
others.

1849.

April 13.

Case of
MOTEROOLLA
SHAIK SIR-
DAR and
others.

discrepancies occur. I may, however, here state that for the most part they correspond.

“The prosecutor, before the police, first stated he heard the deceased name the prisoners 21 and 22 as the individuals who were murdering him: this he afterwards denied. Before the magistrate, in his deposition, he stated, his denial arose from apprehensions for his life. He confirmed his first story in the sessions court, and, in addition to it, said the deceased had told him he had counted the money 35,000 rupees in notes, and put them into a box during the day on the night of which the dacoity took place. Other witnesses have deposed that they heard the deceased call upon the prisoners 21 and 22 by name, to assist in saving him from the attack of the dacoits; and so far as the evidence of the approvers is to be trusted, they distinctly state the prisoners were not present on the spot. I do not therefore believe that the deceased named *them* as his assailants, nor do I give credit to the statement that the sum of 35,000 rupees was carried off. There is no proof on the record of this fact, nor of the fact that the darogah had that sum with him, though Government paper for 5,000 rupees, and bonds for 10,000 rupees, and cash, the exact amount of which is not ascertainable, were carried off.

“The approver Mothoor, before the police, did not mention the names of the prisoners 8, 9, 14, 16, and 18, though he did before the magistrate and also before the sessions judge.

“The approver Petumber omitted the names of the prisoners 9, 10, 11, 14, and 17 before the police, though he named them before the magistrate. Before the sessions judge he named seven prisoners, but pointed out six only, viz. 7, 9, 10, 11, 16, and 20.

“Juggissore Biswas. This witness, as appears from the Maniktullah darogah's report of the 25th August, denied having given in any list of dacoits to the deputy magistrate, Benecmadhub Chatterjea, as stated by Tarnee Churn Mitter, his mohurrir. In the foudaree and sessions courts, however, he deposed that Mothoor came to him in Chyte, and solicited him to join in the dacoity, and that he mentioned this to the deputy magistrate, and gave the names of the dacoits, which he had learned from Mothoor.

“Nobeen Doss. This witness was not examined by the police. In the foudaree court he states that he is the younger son of Rutton Das, and a servant of prisoner 22; that the prisoners 21 and 22 have for months in his presence been urging his father and brothers to commit this dacoity and murder; that he has been cognizant of this for the above period. His brothers, on the contrary, say that he knew nothing of the affair. In the sessions he confirms their statements.

"Gooroodas Das. The police did not examine this witness, a servant of prisoner 21, who with the last was sent in on the 29th August to the magistrate, with a report stating that neither of them would say what he knew though cognizant of all. The witness in the foudjaree and sessions court deposes that the prisoners 21 and 22 talked of the darogah giving them nothing, and that he was to be murdered; that they had consultations on the subject with Rutton Das and his two sons.

"Modhoosoodun Pote. This witness in the foudjaree court deposed that he went to the house of prisoner 21 with Mothoor in the month of Phalagoon, to make arrangements for the dacoity. The prisoner 21 said the darogah must be killed and his house plundered, and that 50,000 rupees were to be had there. In the sessions he deposed he was taken to the house of a man of fair complexion, with whose name or person he was not at that time acquainted. The witness, on being desired to point out the prisoner 21, the peshkar, was unable to do so. The witness had never seen Mothoor till he came to arrange the dacoity: he never mentioned what he knew till he spoke to Seroop in jail. In answer to a question by the prisoner 22, the witness states the prosecutor did give two different statements to the police.

"Jye Chunder Das. This witness, *in addition* to what he said in the foudjaree court, deposed in the sessions that the deceased, some time before the dacoity, asked him and the prosecutor whether they believed that prisoner 21 would cause a dacoity to be committed in his house and have him murdered. Such an omission in his first deposition is very remarkable. Upon being further questioned by the moulvee on this point, the witness stated he had received a confidential letter from the deputy magistrate, Beneemadhub, to this effect; but the deceased took no precautions, nor did he give information to the police.

"The above details will, I believe, convey in abstract a sufficiently clear view of the principal facts and evidence of the case.

"In the following remarks I propose to consider the case of each prisoner *seriatim*. They will indicate the grounds of conviction or of acquittal of each prisoner.

"*Prisoner 1.*—This prisoner confessed in the mofussil and before the magistrate. His confessions are proved to have been made voluntarily. A box, containing Government securities, bonds, and other valuable papers, was, through him and on his pointing it out, produced from his field, where it had been concealed and covered with some hemp plants. He is also named by the approvers.

"I find him guilty of aiding and abetting in the crimes charged in the first and fifth counts.

1849.

April 13.

CASE OF
MOTEEGOOLIA
SHAIK SIR-
DAR and
others.

1849.

April 13.

Case of
MOTHEOOLLA
SHAIK SIR-
DAR and
others.

" *Prisoner 2.*—The prisoner, it is alleged, confessed in the mofussil. The two witnesses who attest the confession depose, however, that they heard the prisoner crying out before he made a confession, though they, at the time it was taken, saw no violence committed on him. In his confession he acknowledged receipt of four rupees as his portion of the plundered property, which he gave up to the police who accompanied him to his house. He lives close to where the dacoity took place, is a servant of the prisoner No. 22, Komlakanth Audit, and is sworn to by all the approvers. In the foudaree court he stated he was at his master's, and alleged he was beaten by the police, but had no evidence to prove that fact.

" In the sessions court he stated he had gone to Gurreeah Ilât, and returned with three or four persons (his witnesses) to his own house, where he was all night.

" These statements are at variance, and there is strong reason to suspect that, having had time for the purpose, this last defence has been got up in collusion with his witnesses. He is pointed out by the witness Kungalee Manjee, as one of those who crossed the river in his boat on the night of the dacoity.

" I convict him of aiding and abetting in the crimes charged in the first count.

" *Prisoner 3.*—This prisoner's confessions in the mofussil and before the magistrate are fully proved. He is named by the approvers. In the sessions he endeavoured to establish an *alibi* by the evidence of two witnesses, one of whom only was present and deposed the prisoner was at his house.

" I convict him of aiding and abetting in the crimes charged in the first count.

" *Prisoner 4.*—The prisoner's voluntary confessions in the mofussil and before the magistrate are proved. He is named by all the approvers. At the sessions he pleaded he was at Koragatchee, and three witnesses depose to that effect. I do not place any credit in their evidence. The prisoner had ample time subsequent to his confessions to get up an *alibi* before his trial at the sessions, and to procure evidence in support of it.

" I convict him of aiding and abetting in the crimes charged in the first count.

" *Prisoner 5.*—This prisoner confessed in the mofussil and before the magistrate that he accompanied the dacoits. He is named by all the approvers. In the sessions court he stated he was at home on the night of the dacoity, and cited witnesses. Two of these supported him, he repudiated the others. Such a defence, after the lapse of some time, and coming after two confessions one confirmed by the other, I hold to be bad.

" I convict the prisoner of aiding and abetting in the crimes charged in the first count.

" *Prisoner 6.*—The prisoner's voluntary confessions before the police and the magistrate are attested. He was named by one only of the approvers in the sessions court—though by all in the foudjaree. His evidence in support of an *alibi* is not satisfactory.

I convict him of aiding and abetting in the crimes charged in the first count.

" *Prisoner 7.*—The prisoner denied throughout, and stated he was at home on the night of the dacoity, and also at one Reedyeram's. The evidence of Sukteeram and his wife proves that the prisoner and prisoner No. 8, with prisoner No. 9, brought a shawl belonged to deceased, of considerable value, about 250 rupees, to their house, where they buried it in a bag under a *machan*. The prisoner is named by all the approvers, with whom he had consulted before the dacoity took place, and appears to have been the leader of that part of the gang which was brought from the other (the Barripore) side of the river. His defence is not satisfactorily proved.

" I convict the prisoner of the crimes charged in the first and fifth counts.

" *Prisoner 8.*—The prisoner denied throughout, and said he was at home. The evidence of Sukteeram and Malotee, his wife, proves he accompanied the last mentioned prisoner. He is named by one only of the approvers as being present on the occasion of the dacoity. The witnesses cited in defence deny that they know any thing of what he has urged in his answer. Whatever doubt there may be of his actually being present, there can be none of his participation in the crime to the extent of receiving and concealing, in conjunction with prisoners 7 and 8, the shawl already spoken of, in the house of Sukteeram, who, with his wife, immediately they were called upon by the police, in the presence of witnesses Gomanee Khan and Kalee Churn Mundul, stated the three prisoners 7, 8, and 9, had left it with them.

" I convict this prisoner of receipt of plundered property, knowing it to be such, *i. e.* on the fifth count.

" *Prisoner 9.*—The prisoner is said to have confessed in the mofussil. He is named by two of the approvers, and accompanied the prisoners 7 and 8, when they left the shawl in Sukteeram's house.

" I convict him of aiding and abetting in the crimes charged in the first and fifth counts.

" *Prisoner 10.*—The prisoner is said to have confessed in the mofussil. Before the magistrate he denied his confessions, and said he had been beaten, but had no witnesses. He was named by two of the approvers; and certain plundered property produced by his child from a tank, in which it was sunk in an earthen pot, has been sworn to by the prosecutor and his witnesses.

1840.

April 13.

Case of
MOTEEGOOLLA
SHAIK NIRDAR and
others.

1849.

April 13.

Case of
MOTHEOOILLA
SHAIK SIR-
DAR and
others.

" I convict the prisoner of aiding and abetting in the crimes charged in the first and fifth counts.

" *Prisoner 11.*—This prisoner confessed in the mofussil and before the magistrate. He is named by all the approvers. His sister, Rajee Bewah, gave up some cloths, which the prisoner after the dacoity put in her charge; and two witnesses, Ramdhun and Ramnarain Mundul, depose to this fact. Two witnesses for the prosecution recognise one of these.

" I convict the prisoner of aiding and abetting in the crimes charged in the first and fifth counts.

" *Prisoner 12.*—The prisoner confessed in the mofussil and before the magistrate. He is named by all the approvers. His confession is full and clear. In that before the magistrate he says Mothoor, one of the approvers, gave him some cloths and eight rupees, which he owed him. His defence in the sessions is, that he was at Gowreepersaud Mitter's in Sobha Bazar. Two of his witnesses support this defence, but I do not consider it good in the face of the evidence for the prosecution. It was easy for the prisoner to get up this defence preparatory to giving in his answer before the sessions.

" I convict him of aiding and abetting in the crimes charged in the first and fifth counts.

" *Prisoner 13.*—The prisoner is said to have confessed in the mofussil: he denied before the magistrate. One only of the approvers named him. His defence in both courts is, that he was in attendance on the child of one Narain Haldar, who had been bitten by a snake; and two witnesses depose to the fact. Some eight rupees only were taken from him, which of course cannot be recognised. Upon the whole I give this prisoner the benefit of the evidence he has produced, as that for the prosecution is by no means strong.

" I acquit the prisoner.

" *Prisoner 14.*—None of the approvers were able to name this prisoner when they were admitted to give evidence. Two of them pointed him out, alleging they had had consultations with him regarding the dacoity, and that he was one of the party. He is said to have confessed in the mofussil. He denied in the courts, and pleaded he was at Hotoor, 10 coss distant from Narainpore. His witnesses support his statement. Nothing but four rupees was found on him, which his uncle gave up to him in pledge of his land, as he states. The evidence in the prisoner's favor is as strong as that against him, and he is entitled to the benefit of the doubt.

" I acquit the prisoner.

" *Prisoner 15.*—The prisoner is brother of the above prisoner No. 14, Tarachand Chukurbutte. He too is said to have confessed in the mofussil. He made the same defence as his brother

in the courts. He is only recognised by one of the approvers. His defence is supported by the witnesses. One witness only to the production of a shirt, which, however, is not satisfactorily recognised, for the prisoner was unable to identify it, and in lieu pointed to a jean jacket.

"I acquit the prisoner.

"*Prisoner 16.*—This prisoner confessed in the mofussil and before the magistrate, to the extent that he was present at the dacoity and received five rupees. In the sessions court he stated he was at home, and this story is confirmed by two witnesses, but they are not worthy of credit under the circumstances.

"I convict the prisoner of aiding and abetting in the crimes charged in the first count.

"*Prisoner 17.*—This prisoner is said to have confessed in the mofussil. He denied in the courts, stated before the magistrate he was beaten, but had no evidence. It was not till he was put on his trial in the sessions court that he pleaded an *alibi*, at his own house, where he was sick; and he is supported by his witnesses in this. If such were, however, fact, he would have at once stated it before the magistrate. The approvers (two of them) point out very minutely the part the prisoner took in the seizure of the deceased in his house; and I have no reason to doubt their credibility as to the prisoner's presence on the spot.

"I convict him of aiding and abetting in the crime charged in the first count.

"*Prisoner 18.*—The prisoner was released by the sessions judge.

"*Prisoner 19.*—The prisoner is said to have confessed in the mofussil: he denied in the courts. No property was found on him. He is recognised by one of the approvers only.

"I acquit the prisoner.

"*Prisoner 20.*—This prisoner also in the mofussil confessed: he is named by all the approvers, to whom he was well known. The witness Kungalee Manjee points him out as one of those who crossed in his boat on the night of the dacoity. Several witnesses have sworn to his being at home on the occasion, but I have no reason to differ with the sessions judge, before whom these witnesses were examined, in the conviction of the prisoner."

"I convict him of aiding and abetting in the crimes charged in the first count.

"*Prisoners 21 and 22.*—These prisoners have throughout denied all knowledge of the crimes charged previous to their commission, as well as all participation in them or privy to them at any period. The principal evidence against them is contained in the depositions of Rutton and his two sons, the approvers. I will not say it is the only evidence, for other witnesses have been examined, but their evidence is so weak and their state-

1849.

April 13.

CASE OF
MOTEEOOLLA
SHAIK SIRDAR and
others.

1849.

April 13.

Case of
MOTEEOOILLA
SHAIK SIR-
DAR and
others.

ments so improbable, nay incredible, that to my mind it carries no conviction.

“The case is not susceptible of being put in a stronger light against the prisoner No. 21 than it has been put by the additional sessions judge in his letter of reference. So strong is his impression and belief of the prisoner's guilt that he has recommended capital sentence should be passed on him. It will only be necessary for me to record the grounds on which, after most careful deliberation and consideration of all the circumstances, I come to a very different conclusion, and dissent altogether from him.

“First. As to the statement of the prosecutor that the deceased named this prisoner and also prisoner 22 at the time he was attacked.

“I observe by the record that the prosecutor at one time did make such statements : at another he denied having done so.

“I find that some witnesses depose the deceased darogah called out to these two prisoners to come to his assistance.

“I find that Rutton, the approver, in his deposition before the magistrate, swore that he *did not see* the peshkar, prisoner 21, or Kummul Audit, prisoner 22, at the assemblage at his house, whence the gang started to commit the dacoity ; neither *did he see them at the darogah's house* at the time.

“I find Mothoor, another approver, in his deposition, swears neither of them (*i. e.* of the above prisoners) that *night at the time of the affair was near us.*

“I find that the third approver, Petumber, in his deposition, swore *neither the peshkar, No. 21, nor Kummul Audit, No. 22, was present at the dacoity ; nor were they present at the assemblage.*

“Nothing more need, I am sure, be urged to disprove the allegation that the prisoners actually perpetrated the deed.

“Second. As to the improbability of Rutton and his sons' getting up so serious a dacoity ‘unless they were abetted by some influential person,’ by which, I presume, is meant the peshkar,—and with reference ‘to the valuable papers,’ regarding which the additional sessions judge remarks, ‘It is not likely that men who could not read nor write should have taken much notice of such property, unless they had acted under the direction of or had the power of applying to some superior and more learned person for guidance,’ I would observe the problem to be solved is, who was that influential person? The reasoning of the sessions judge, in my opinion, in no way tends to its solution ; for the valuable papers, bonds and Government securities, would be equally valueless to the approvers and the peshkar, unless endorsed or in some way duly assigned.

“Third. As to the collateral evidence to establish the prisoners' originating the dacoity.

“ Modoosoodun, a witness, ‘ *understood*,’ when in jail for another dacoity, that the peshkar was getting up the dacoity, and a spy, the witness Juggissore, informed the late deputy magistrate, Bencemadhub Chatterjea, that the dacoity was likely to take place, and gave him a list wherein the peshkar, prisoner No. 21, and Mothoor, are called the ghuttuks, *i. e.* the leaders. Now it must not be forgotten that the names in this list were given by Mothoor to Juggissore, and it is a singular fact that none of the names of the parties now charged are to be found in the list save those of the peshkar, Mothoor himself, and one other. This appears from the deposition of Juggissore, who also states he never met the peshkar and is not acquainted with him, and further on ‘ that he did not know Mothoor till he came to him about the dacoity, and that Mothoor has never since been at his (the witness’s) house.’ Whatever weight then attaches to the evidence of Juggissore, it derives from the statements of Mothoor.

Fourth. One witness, Gooroodas Das, deposes, he is servant of the peshkar. He heard the peshkar and prisoner 22 in conversation about the dacoity. He was aware of it for two months. He did not speak of this to the Ramnuggur darogah, nor to any one else but the Maniktullah darogah. Before the magistrate he deposed that on the day of the dacoity 8 *strangers* came to the peshkar, who went with them to Rutton’s house. Witness never, but *on the one occasion* spoken to, heard the peshkar and Kummul Audit in consultation about the dacoity, no one else was present. He had been the peshkar’s servant for two years previous to the dacoity.

“ A witness, Nobeen Dass, the son of Rutton, and younger brother of Mothoor and Petumber, deposes, he is servant of Kummul Audit. His master and the peshkar invited Rutton and his two sons to kill the deceased and plunder him. These conferences took place two or three times a month, for three months before the dacoity occurred.

“ The evidence of these witnesses must be weighed with reference to probabilities ; and the character of prisoners up to the period they were charged must not be left out of the scale.

“ It does not appear from the record that the slightest imputation had ever been cast on them previously, from which circumstance and their position in life it may fairly be inferred that they are men of character and respectability.

“ As to the probabilities, I would ask : is it probable that such men should enter upon their career of crime by the commission of crimes of the greatest enormity, arson, dacoity, and murder, simultaneously ?

“ Is it probable they would so recklessly commit themselves to the power of *perfect strangers*, by inciting a dozen of them to join the commission of such grave offences ?

1849.

April 13.

Case of
MOTEROOLLA
SHAIK SIRDAR and
others.

1849.

April 13.

Case of
MOTEEGOLLA
SHAIK SIR-
DAR and
others.

"Is it probable that they would put themselves in the power of such men as Rutton and his two sons, with whom, in consequence of the loss of their stations in the salt golah, the prisoner No. 21 was at enmity?

"I answer all these questions in the negative. I consider the probabilities are against the credibility of the witnesses and in favor of the prisoners. I have, I believe, given the principal evidence brought to bear on the prisoners to prove their instigation of, and connection with, the dacoity. To me it is by no means satisfactory or at all sufficient for conviction. I am bound, therefore, to acquit them.

"There appears to be some difficulty in the mind of the additional sessions judge to account for the names of these two prisoners being so freely used in the course of the trial. It seems to me that this may reasonably be accounted for.

"The deceased darogah lived in the Government salt golah in the midst of a large establishment of Government chuprassees and guards. He was known to be a man of some wealth, and it was supposed that he was in the habit of keeping cash near him, though about 200 rupees only were carried off on this occasion. To attack the house of such a man, under such circumstances, was a bold adventure, and would not be attempted but under some encouragement and hope of support. I am strongly impressed with the idea that Rutton and his two sons made use of the prisoners' names to inspire confidence in their associates, and to induce a belief that nothing was to be apprehended when such strong co-operation and support had been ensured in such influential and powerful quarters. The countenance of the second officer in the Government golah and of one of the principal mookhtars there would, no doubt, create that confidence and give the required encouragement to the gang collectively. To this I attribute the introduction of the prisoners' names in this affair. No better, no sufficient cause is assigned; and in the absence of any proof of their complicity, I think that which I have assumed to be the real cause to be by no means unreasonable.

"Such being my view of the guilt and innocence of the parties charged, I proceed to pass sentence on them. I differ from the additional sessions judge as to the quantum of punishment which should be awarded to the convicted prisoners. No graver offence could be committed than that perpetrated by them; and having come to a conviction of their guilt, I feel that the sentence proposed by the additional sessions judge is quite inadequate to the enormity of the crimes committed.

• "All the prisoners present at the darogah's house on the occasion of his murder, &c., are convicted of aiding and abetting in it. In this list I include the prisoners 1, 2, 3, 4, 5, 6, 7, 9,

10, 11, 12, 16, 17, and 20, each of whom I sentence to transportation for life in labor and irons.

"The prisoner 8, I convict of receipt of plundered property knowing it to be such, and sentence him to (14) fourteen years' imprisonment with irons and labor.

The prisoners 13, 14, 15, 19, 21, and 22, I acquit, and order their immediate release."

1849.

April 13.

Case of
MOTEROOLLA
SHAIK SIR-
DAR and
others.

MADHOO SAHOO

versus

BHAIG SAHOO AND GUDDAIE SAHOO.

CHARGE—THEFT.

THE sessions judge of Cuttack thus reported the circumstances of this case, which was tried at the sessions held for that district in February :

"The cause of reference is a disagreement between myself and the law officer as to the guilt of Guddaie Sahoo.

"The exact date on which the theft took place has not been ascertained, no information of its occurrence having been communicated to the police. It, however, appears from the statement of the plaintiff that it occurred some time in the month of *Maugh* 1255, or the end of January, or beginning of February 1848, when he (plaintiff) was absent from home; and the parties, who committed it, were detected in the following manner :

"In the month of *Falgun* 1255, when the plaintiff was employed in building a wall for Ramchunder Jegdeb, brother of the *rajah* of Sookindah, in whose *zemindaree* the theft occurred, he accidentally told Khelaie Sahoo to search for some tobacco in the *butooah*, or bag of Bhaig Sahoo, and on his doing so, he discovered a rupee of old coinage, which he took to the plaintiff, stating that it resembled his rupees which were stolen, and, on the latter's identifying it, and asking Bhaig Sahoo how he came by it, he confessed committing the theft in company with Guddaie Sahoo, his uncle, and Seebaie Sahoo, his cousin, and promised to restore the stolen property; and on their going home to their village, Bhaig Sahoo caused his cousin, Seebaie Sahoo, since deceased, to produce 13 Sicca rupees and five pieces of cloth, together with a *khansah* and *lotah*, which he had purchased with part of the stolen money, and stated that he had placed the remainder of the stolen property in the house of his uncle Guddaie Sahoo; but Guddaie, on being questioned regarding it, denied having received it. The plaintiff then forwarded the thieves in charge of the *chowkeedar* to the *thanah*; but after proceeding part of the way there, they returned to the village, and Guddaie executed an *ikrarnamah* promising to restore

1849.

April 14.

A sessions judge having proposed to convict and sentence a prisoner to privy to theft, on the ground only of an agreement which he had given to the prosecutor and which the prosecutor had accepted from him, promising the restoration of the stolen property in 4 months, held (there being no proof that any part of the stolen property had been in the possession of the prisoner, though part of it had been traced to the possession of his son) that such a privy, with assent of the prosecutor, is not a ground for a penal conviction.

1849.

April 14.

Case of
BHAIG SAHOO
and another.

the stolen property to the plaintiff in the course of four months. The plaintiff further stated that he was ill and unable to go to the *thanah* to complain, and that the *chowkeedar* was afraid to give information lest he should incur the displeasure of the *rajah*; and when the police *darogah* proceeded in the month of *Asin*, or September last, to investigate some charge of plunder against the *rajah* of *killah* Sookindah, the *rajah* confined him lest he should give information of the theft; but the *darogah* somehow got tidings of it, and caused the release of plaintiff and the arrest of the prisoners.

"The prisoner, Bhaig Sahoo, confessed having committed the theft, before the police and the deputy magistrate, and he also pleads guilty before this court; but, though Guddaie Sahoo has throughout denied being concerned in the theft, it is, however, fully proved, by the evidence of the plaintiff and witnesses, that he executed an *ikrarnamah* promising to restore the property; and not only does the confessing prisoner accuse him of being an accomplice in the crime, but the recovered property was produced by his son, Seebaie.

"The law officer convicts the prisoner, Bhaig Sahoo, on his own confession, and the production, by his direction, of part of the stolen property, but acquits Guddaie Sahoo, on the ground that he, probably, executed the *ikrarnamah* through fear of being supposed to be implicated in consequence of the production of the property by his son, and likewise with the view to prevent his son's guilt from becoming known, and that it was not proved that he was cognizant of the theft before the property was found. But such circumstances alone constitute the offence of privity, and upon those very grounds I consider the guilt of Guddaie Sahoo to be established. Therefore, convicting Bhaig Sahoo of the theft, and Guddaie Sahoo of privity thereto, I would sentence them, under all the circumstances of the case, as follows, *viz.* Bhaig Sahoo to three years' imprisonment, with labor in irons, and Guddaie Sahoo to one year's imprisonment, and to pay a fine of rupees 20 within 14 days, or to labor until the fine is paid."

BY THE COURT.

MR. J. R. COLVIN.—"The circumstances referred to by the sessions judge certainly amount to a privity to the theft on the part of the prisoner, Guddaie Sahoo; but it was a privity with the assent of the prosecutor, who appears to have accepted that *ikrarnamah* promising restoration of the remainder of the stolen property; and it would, therefore, be a straining of the law now to convict the prisoner in question, only on the ground afforded by that agreement.

"I confirm the conviction and sentence of imprisonment for three years with labor in irons, in regard to the prisoner Bhaig Sahoo, but acquit Guddaie Sahoo."

KASSEENATH MUNDUL NAPIT

versus

TAKOORDAS PORAH AND KISHORE SANTRA
BAGDEE.

CHARGE—HOMICIDE.

THIS case was tried at the sessions for zillah Hooghly in March.

The evidence shewed that the deceased, a young woman of 15 or 16 years of age, had complained of pains in her body, and afterwards spoke and behaved strangely, gnashed her teeth, &c. Two natives, *budees*, who were called in, felt her pulse, but could not say what was the matter with her. They, therefore, advised that some other person should be consulted. The prisoner Kishore Santra Bagdee* was accordingly summoned, and declared the deceased was possessed by a devil, and, except at night, no medicine could do her any good. He accordingly came in the evening and gave her some snuff, but without effect. The patient was then violently beaten by Takoordas Porah, with shoes, on the head, breast, and back, to expel the devil, which he declared to be a very stubborn one; adding that nothing else would do, and that the beating would only hurt it, and not the patient, who, however, died three days after.

The civil assistant surgeon deposed that the death of the deceased was caused by the effusion of blood in the chest and abdomen. Before death inflammation to some extent had supervened, shewing that the deceased had survived the infliction of the injuries which had caused death. These injuries, he was of opinion, were produced by blows or kicks, either by some blunt weapon held in the hand, or by kicks from feet covered by a shoe or shoes. There were very extensive external marks of injury all over the body, but particularly over the chest and abdomen, although all the organs of the body were perfectly normal, except the morbid appearances above spoken of. After detailing further evidence and referring to the *futwa*, which acquitted the prisoner, on the ground of the absence of any proof of bad intention, the sessions judge observed:

“I do not consider it safe that persons so entirely uneducated as the prisoner, who is unable to read or write, should be exempted from the penalty of their acts, when they are of so serious a character as to cause the loss of life. I cannot, therefore, agree with the *futwa* of acquittal. Hence I beg to submit the case for the final orders of the Nizamut Adawlut, with a recommendation that the prisoner be sentenced to 18 months’ imprisonment

1849.

April 21.

Prisoner convicted of culpable homicide by beating a girl heavily with shoes for the expulsion of a supposed evil spirit, from the effect of which beating the girl died, sentenced, there having been clearly no malicious intent, to imprisonment for one year without labor.

* He died before the trial came on.

1849. with labor and irons,—that it might go forth to the world that natives, pretending to medical knowledge, should be aware of the danger they run, in using violent remedies for the purpose of expelling an evil spirit from the bodies of persons who may be either insane or delirious.”

April 21. Case of TAKOORDAS PORAH and another.

BY THE COURT.

MR. J. R. COLVIN.—“This is a case in which the prisoner, when called in with his teacher (since dead,) to cure a girl of 15 or 16 years of age of raving fits, treated her as possessed by a devil, and, besides using other means intended as remedies, beat her heavily with shoes for its supposed expulsion, so that the girl died within three days from the effects of the blows.

“The act was one of such gross ignorance and culpable rashness as to require a conviction for culpable homicide; and yet there was clearly no malicious intent on the prisoner’s part.

“I think that a sentence of imprisonment for one year, without labor, will, under the circumstances, be sufficient penalty for the offence, and award it accordingly.”

 RAMBHOUN MISSER

AUTMA MISSER, SREE MISSER, AUDEE MISSER, BODHA AHEER, DODHA MISSER, SHEWDEAL MISSER, NUSSEEB MISSER, BABOO RAM MISSER, AND BUNDIEJEE MISSER.

CHARGE—MURDER AND WOUNDING.

1849. THE prisoners were tried on the following charges, at the sessions held for zillah Shahabad, in March 1849.

May 5.

Where other crimes, as homicide, or wounding, are committed in direct connection with, and in furtherance of, a riot and assault, the charge should invariably be of riot and assault attended with such

Autma Misser and Sree Misser were charged with the wilful murder of Sheo Suhae Rae, brother of the prosecutor, and in the second count with being accomplices in wounding Singar Rae, Moosafir Rae, and Sumpat Rae; Audee Misser, with being an accomplice in the above case; and Bodha Aheer, Dodha Misser, Sheodeal Misser, Nusseeb Misser, Baboo Ram Misser, and Bundhejee Misser, in the first count, with being accomplices in wilful murder, and in the second count, with wounding Singar Rae, Moosafir Rae, and Sumpat Rae.

The sessions judge thus reported the case to the Nizamut Adawlut.

other crimes, and not of participation in those other crimes only. Six prisoners acquitted, as they were charged with homicide and wounding only, and they could not satisfactorily be identified as having been concerned in those crimes, though there was proof of their having participated in the riotous and unlawful assemblage and attack, in pursuance of which the homicide and wounding occurred.

"My dissent from the *futwa* of the law officer, relative to the grade of guilt proved, is the cause of my troubling the Court with this reference. Singar Rae, one of the individuals wounded in this case, was cutting grass in his field on Sunday, the 7th January, when, at about noon, a number of armed men assembled from the adjacent villages, and a desperate row commenced, which ended in Sheo Suhac, the cousin of the prosecutor, being so severely maltreated that he died from the effects of the blows he received, on the following morning. There were others also who were wounded on the occasion. The cause of the quarrel is involved in some mystery, for there appears to be no feud whatever regarding the particular plot of land from which the grass was being cut, nor, indeed, is any apparent reason assigned for the tumult and its consequences.

"Twelve eye-witnesses have deposed before this court; and from their testimony we gather that, of those present, the prisoners Autma Misser and Sree Misser were actively engaged in castigating Sheo Suhac, and that Audee Misser and Bundhejee Misser were the commandants, &c. on the occasion; the others, Bodha Aheer, Dodha Misser, Sheodeal Misser, Nusseeb Misser, and Baboo Ram Misser, inclusive, were present, aiding and abetting.

"The inquest paper disclosed a number of wounds on the head, legs, and fingers of the deceased. He was quite well before the row, and appears to have been about 29 years of age.

"The prisoners plead *not guilty*. Audee Misser and Bodha Aheer wished it to appear that they were more sinned against than sinning; but they call no witnesses. The others set up *alibis*, which they were unable to sustain to the satisfaction of the court.

"The *futwa* of the law officer convicts the prisoners Autma Misser, Sree Misser, Audee Misser, and Bundhejee Misser, (with exception, as regards the latter, to the wounding of Sumpat Rae,) of the crimes charged. The remaining prisoners he convicts on the first count, and, with regard to the second, of being *accomplices* in the wounding (instead of the actual wounding) of Singar Rae, Moosafir Rae, and Sumpat Rae, and declares them liable to *akoobut*.

"I concur in the finding of the *moulvee* in all points, save the words *wilful murder*, for which I desire to substitute *culpable homicide*, wherever the former may be found or used; and, with this view of the case I beg to recommend that Autma Misser and Sree Misser be sentenced to five years' imprisonment, with labor and irons; Audee Misser and Bundhejee Misser to four years' imprisonment; and the rest to three years."

1849.

May 5.

Case of
AUTMA MIS-
SER and
others.

1849.

BY THE COURT.

May 6.

CASE OF
AUTMA MIS-
SER and
others.

MR. J. R. COLVIN.—“There are important defects in the investigation of this case, and in the charge on which the prisoners were committed.

The case appears, from the first notice of it in the reports of the *darogah*, dated 8th and 27th January last, and from the fact of Autma Misser, one of the prisoners, having been himself bruised and marked as by a blunt weapon, and shewn by the letter of the assistant surgeon (on the proceedings of the magistrate) of the 12th January, to have been an affray, in which many of the witnesses for the prosecution had most probably a part. The magistrate should be required to furnish an explanation on this point, as it was his duty to direct a close inquiry, in order to ascertain whether the occurrence was really not an affray between two parties, but an unprovoked and tumultuous assault by one of them upon the other.

“The charge upon which the prisoners, even in the latter case above stated, should have been brought to trial was that of riot and assault, with a detail of any particular crimes committed in direct connection with, and in furtherance of, such general assault, so that all might be brought to punishment who might be proved, though not identified as having perpetrated the particular crimes, to have participated in the general riotous and unlawful assemblage and attack. In consequence of this charge not having been so framed, the greater part of the prisoners must necessarily be acquitted.

“There is, further, no proper evidence to prove that the deceased, Sheo Suhæ Rae, died in consequence of the wounds received by him during the attack in question. The corpse was sent in by the *darogah* to the sudder station, and it does not appear why the evidence of the medical officer was not duly taken in conformity to paragraph 7, of the Circular Order No. 54, of July 18th, 1830.

“The preceding remarks must be communicated to the sessions judge for his own guidance and that of the magistrate, with the following conviction and sentence, viz. of No. 4, Autma Misser, and No. 5, Sree Misser, as accomplices in the severe wounding of Sheo Suhæ Rae, to imprisonment for four years, and No. 12, as an accomplice in the wounding of Singar Rae and Moosafir Rae, to imprisonment for three years; Autma Misser and Sree Misser to pay a fine of two hundred rupees each, and Bundhejee Misser of one hundred rupees, within one month from the date on which this order may be communicated to them by the magistrate, or, in default of payment, to labor, without irons, until the fine be paid, or the period of the sentence expire.

“I acquit the other six prisoners.”

NYAN KHAN

versus

- (1) ALLIF KAREEGUR, (2) PANJOO KAREEGUR, AND
(3) RAJOO KAREEGUR.

CHARGE—MURDER.

1849.

May 11.

THE prisoners were tried on the following charges at the sessions held in the month of April 1849, for the district of Backergunge, viz.

The sessions judge thus reported the case :

Prisoner No. 1, in the first count, with the wilful murder of Sabur Khan, and in the second count, with concealing the circumstances of the case by sinking the body of the deceased into the river ; and of prisoners Nos. 2 and 3, with concealing the circumstances of the case, by sinking the body of the deceased into the river.

“ The prosecutor was brother of the deceased, and deposed that on a Tuesday, in the month of Maugh, date not remembered, (but which appears to have been the 17th,) he heard from his mother that the deceased had left his house on the previous night and had not returned, and that search must be made for him. He accordingly commenced inquiries that very day, and continued them without success till the Saturday morning, when his step-brother (witness 21) Kajul, who had accompanied him to the river in search of the deceased, found the corpse lying near the bank, with a *ghura* attached by a rope to the neck and another to the legs, and both feet fastened with a rope. The *chowkeedar* of the village near at hand was sent for and remained in charge of the corpse with witness 21, while he (plaintiff) proceeded to the *thanah*. On the *darogah's* arrival he mentioned the illicit connection which had existed between the deceased and the mother of prisoner No. 1, Allif Kareegur, which led to his apprehension and confession. It appeared that, on the Wednesday, witness No. 20, Seetul Khan, had communicated to the prosecutor his having seen, in the premises of prisoner No. 1, Allif Kareegur, a mat and bundle of straw with marks of blood, which were not satisfactorily accounted for, and which he had given in charge to witness 28, Ghunye Mahomed *chowkeedar*. The prosecutor went himself also to the house of the prisoner Allif in search of his brother. The prisoner was silent, but his uncle, Lufshkur, encouraged the prosecutor to continue his search. There was a wound on the head of the corpse, as if from a *lattee*, and another on the eyebrow, the bone of which was fractured, and, although the body was swollen, the features could be easily distinguished. The prosecutor further stated that the *lattee* now in court was produced by the prisoner Allif from his house. This instrument weighed about fifteen *chittacks*.

On a charge of “ concealing the circumstances of a murder by sinking the body of the deceased into the river,” the sessions judge, holding the charge proved against two of the prisoners, sentenced them to six months' imprisonment, and a fine of 50 rupees in lieu of labour. Regarding this as a sentence on a conviction as for privacy only, which might have been understood by the sessions judge to be the meaning of the vague terms of the charge, the Nizamut Adawlut did not interfere, but pointed out that such a sentence, even on a conviction of mere privacy to murder, was unduly light. (See Ruggoo Junna's case, Nizamut Adawlut Reports, vol. IV. page 54.)

It was added that, according

to the tenor of the Circular Order, No. 8, June 7, 1847, the charge should have been framed distinctly either for accessoryship in the murder after the fact, or for privacy.

1849.

May 11.

Case of
ALLIF KA-
REEGUR and
others.

"The prisoners No. 1, Allif Kareegur, and No. 3, Rajoo Kareegur, denied the charges in this court : prisoner No. 2, Panjoo Kareegur, acknowledged the crime for which he was arraigned. In the mofussil, prisoner No. 1, Allif Kareegur, confessed having struck the deceased with a *lattee* on the head three times, when he came to his house on the night in question, and, in company with prisoners 2 and 3, Panjoo Kareegur and Rajoo Kareegur, having sunk the corpse in the river by attaching a *ghura* to the neck and another to the legs and tying the feet together. He alluded to the illicit connection between the deceased and his (prisoner's) mother, which had existed for two or three years ; that he had been annoyed in consequence, and had frequently prohibited the intercourse, and was determined to punish the deceased. Before the magistrate he alluded also to the connection between the deceased and his mother, and stated that he was desirous of beating him ; that the first blow of his *lattee* accidentally fell on the head of the deceased and knocked him down, and then, being afraid of the consequences unless he killed him, he gave him two more blows on the head with his *lattee*, and sunk the corpse in the manner described. Prisoner No. 2, Panjoo Kareegur, in the mofussil and before the magistrate, acknowledged that he saw prisoner No. 1, Allif Kareegur, on the night in question beating something ; that the prisoner No. 1, Allif, mentioned what he had done in consequence of the deceased's visits to his mother. Prisoner No. 2, Panjoo Kareegur, admitted having seen a severe wound on the head of the deceased, and assisted prisoners 1 and 3, Allif Kareegur and Panjoo Kareegur, in sinking the corpse in the river. Prisoner No. 3, Rajoo Kareegur, in the mofussil and before the magistrate, acknowledged his sinking the corpse of the deceased in company with prisoners Nos. 1 and 2, Allif Kareegur and Panjoo Kareegur. These confessions were duly attested.

"Witness No. 1, Musst. Dhopye, the wife, and witness No. 18, Musst. Roopye, the mother, and witness No. 19, Musst. Monye, the cousin of prisoner No. 1, Allif Kareegur, deposed that the deceased had come to their house on the night in question, but met his death by tumbling over some logs of wood in endeavouring to escape from prisoner No. 1, Allif Kareegur ; the two former witnesses deposed also to the removal of the corpse by the prisoners. Before the magistrate, witness No. 1, Musst. Dhopye, declared she saw her husband beating some one with a *lattee*, and discovered, from the conversation between him and her mother-in-law, that the deceased had been killed. She pointed out the *lattee* which her husband had used, and alluded to the connection between the deceased and her mother-in-law, which had existed for about two or three years. She mentioned also the removal of the corpse by the prisoners, and the sinking it in the river as acknowledged by her husband.

"Witness 18, Musst. Roopye, also, before the magistrate, admitted the connection between herself and the deceased, and deposed to her having heard a noise of beating and seeing the deceased had fallen down insensible, his head wounded and bleeding; that the prisoner 1, Allif Kareegur, was resolved immediately to conceal the corpse, which he took out in company with prisoners 2 and 3, Panjoo Kareegur and Rajoo Kareegur, and on their return he stated that he had sunk it in the river. She also pointed out the *lattee* with which the blow was given.

"Witness 19, Musst. Monye, also deposed, before the magistrate, to her having heard a noise of beating.

"These witnesses had evidently been tutdreo to depose in this court in the manner just described; and considering their circumstances and position with regard to the prisoner 1, Allif Kareegur, I did not think any further proceedings necessary.

"Witness 20, Seetul Khan, deposed to the search made for the deceased, his step-brother; to his going to the premises of prisoner 1, Allif Kareegur, and observing a mat and some straw stained with blood, which he gave in charge to witness 28, Ghunye Mahomed *chowkeedar*; and to the discovery of the corpse, on which he saw these wounds, namely, one on the head, one on the right eyebrow, and one below it.

"Witness 21, Kajul Khan, step-brother of the prosecutor, was the person who first discovered the corpse of the deceased in the river, and mentioned the wounds he had observed.

"Witness 28, Ghunye Mahomed *chowkeedar*, corroborated the evidence of witness 20, Seetul Khan, and, together with witnesses 29 and 30, Mahomed Wasil and Kifayutoolla, deposed to the confession of prisoner 1, Allif Kareegur.

"Witness 31, Badoolla *chowkeedar*, was the person who was summoned by the prosecutor on the first discovery of the corpse.

"The witnesses to the *sooruthal* described a wound on the head four fingers long, half a finger broad; a wound on the right eyebrow, two fingers long and two fingers broad; a third wound near it one finger long, half a finger broad; and a fourth wound under it, one finger long and one broad, and the bones broken.

"The prisoner 3, Rajoo Kareegur, cited a witness to prove an *alibi*, who could depose to nothing in his favor.

"One of the jury considered the charges proved against the prisoners; the other two of the jury considered them proved on violent presumption. I concurred in the latter verdict, and sentenced prisoners 2 and 3, Panjoo Kareegur and Rajoo Kareegur, to six months' imprisonment, and imposed a fine of 50 rupees, in lieu of labor; and with respect to prisoner 1, Allif Kareegur, I am of opinion that, under all the circumstances of the case, he should be imprisoned for life in the Allipore jail."

1849.

May 11.

CASE OF
ALLIF KA-
REEGUR and
others.

1849.

May 11.

Case of
ALLIF KA-
REEGUR and
others.

BY THE COURT.

MR. J. R. COLVIN.—“I convict the prisoner No. 1, Allif Kareegur, of wilful murder, and sentence him to imprisonment in transportation for life, with hard labor and irons. The case is one of murder in revenge for an illicit intercourse which had been carried on for some years by the deceased with the prisoner's mother, notwithstanding the prisoner's remonstrances and threats.

“The charge, as regards the second count against the first prisoner, and as affecting the second and third prisoners, is very incorrectly and insufficiently drawn. It should have been in conformity to the tenor of the Circular Order, No. 8, of June 7th, 1847, distinctly either for accessaryship in the murder after the fact or for privy.

“Giving the prisoners, Nos. 2 and 3, the benefit of the vagueness of the charge, I do not purpose to interfere with the sentence of the sessions judge upon them, which may have been passed as within his competency on a conviction as for privy,—the confessions of these prisoners, which gave the only proof against them, having alleged that they had been forced by threats and violence to aid in the sinking of the body, and the offence remaining clearly established against them being, therefore, only the concealing from the public authorities the fact of the occurrence of the murder.

“But even as for privy, the sentence of the sessions judge must be noticed as very unduly light. He may be referred to an analogous case, Nizamut Reports, vol. IV., page 54, for his guidance in future.

“The three preceding remarks to be communicated with the sentence to the sessions judge.”

GOVERNMENT

versus

KELLYE SING.

1849.

May 18.

A sessions
judge giving
to a prisoner,
charged with
murder, the

CHARGE—WILFUL MURDER.

THE prisoner was tried at the sessions for April 1849, before the sessions judge of Cuttack, who thus stated the facts of the case :

“According to the statement of Musst. Magee, the mother of the prisoner and the deceased, it appears that, on the evening of the crime, proposed that he should be acquitted, but detained for life in the district jail, as it would be unsafe to permit a person of his character to go at large. The Court convicted the prisoner of the murder, as the evidence did not establish that he was at the time “unconscious, and incapable of knowing, that he was doing an act forbidden by the law,” upon which finding alone, upon a plea of insanity, a sentence of acquittal can be passed under Section 1, Act IV. 1849, and sentenced him to imprisonment for life in the district jail, with light labor and fetters, according to the directions of the medical officer of the jail.

the 7th March 1849, corresponding with the 26th *Phalgun* 1256 U., Kellye Sing, the prisoner, and his sister, Musst. Runnea, the deceased, were sleeping on the same litter or bed in the apartment in which she, the said Musst. Magee, partook of her evening's repast, and afterwards left the house for a few minutes; and that on her return she addressed herself to her daughter Runnea, and receiving no answer, she extended out her arm to awake her, and, on its coming in contact with her daughter's body, she found it wet with blood, and that her daughter had been killed; and she immediately gave the alarm to her neighbours, who arrived and arrested the prisoner at the door of the apartment where the deceased was lying; and after the arrival of Soobul Mullik, *chowkeedar*, he acknowledged having killed his sister.

"The prisoner confessed, both before the police *darogah* and the magistrate, that, actuated by a sudden evil impulse, he killed his sister, who was sleeping by his side, with a sword; and the subscribing witnesses have deposed to both confessions having been voluntarily made.

"The cause or motive which induced the prisoner to murder his sister has not been divulged; and his mother, who is the only person likely to be acquainted with it, is evidently very reluctant to say any thing to inculpate her son, through fear of being left without any one to protect or support her. But if the crime was not committed by the prisoner while laboring under a fit of temporary insanity, as she and some of the witnesses *wish to make it appear*, (and I make use of *these words*, because the medical officer, in his letter of the 17th March to the address of the magistrate, stated that he considered him to be in a sound state of mind, and his demeanor before this court, though apparently indifferent to what was going on, exhibited no symptoms of insanity,) grounds of suspicion can alone be found in the fact of the prisoner's having been lying on the same bed with the deceased, and her age which does not appear to have exceeded 13 or 14 years, happily tends to preclude the actual existence of the motive therefrom inferrible.

"Witnesses depose that the prisoner suffered from an attack of insanity, or weakness of mind, 18 months before the occurrence of the crime, and his mother asserts that he had an attack three days before, and that his demeanor was generally sullen and thoughtful; and Hurban Sing, Bahoo Sing, and Gobind Sing, neighbours of the prisoner, whom I summoned, after the case was committed to the sessions, to ascertain the state of the prisoner's mind previous to the occurrence, deposed, in like manner, and stated that he was now occasionally given to low spirits and did not eat his food.

"The prisoner pleaded *not guilty* before this court.

1849.

May 18.

Case of
KELLYE
SING.

1849.

May 18.

Case of
KELLYE
SING.

“ The law officer, in his *fatwa*, convicted the prisoner, on his confessions before the police and magistrate, of wilful murder, but remarks that, although the prisoner at present evinced no symptoms of insanity, it is stated that he was formerly mad, and his mother asserts that he had an attack of insanity three days before he killed the deceased, who was his own sister, and there appears to have existed no motive for his killing her, and he, therefore, infers, from the general circumstances of the case, that the prisoner was laboring under temporary insanity when he committed the crime, and declares that he is liable to punishment by *deyut* only.

“ It is quite clear that the prisoner killed his sister, but what was his motive for doing so, or what was his actual state of mind at the time he committed the act, it is impossible to determine; and, though it is evident that he is not insane at the present time, it is stated that he labored under insanity 18 months ago. Therefore, in the absence of any known motive for his killing his sister, I would give the prisoner, Kellye Sing, the benefit of the doubts as to his state of mind when he committed the crime, and, under all the circumstances of the case, I beg to recommend that he be imprisoned for life in the district jail, as it would be unsafe to permit a person of his character to go at large.”

BY THE COURT.

MR. J. R. COLVIN.—“ This is a case in which the prisoner, who was liable to fits of insanity, murdered his sister without the least provocation, under a sudden impulse of violence, so as to induce a strong presumption that he was not at the time in possession of his reason. But the evidence does not establish that he was at the time ‘unconscious, and incapable of knowing, that he was doing an act forbidden by the law,’ upon which finding alone a sentence of acquittal can be passed under Section 1, Act IV. 1849.

“ The sessions judge should be informed that this is the Act by the principles of which he should have guided his recommendation in the case, and that he ought to have taken the evidence of the medical officer on oath, according to the Circular Orders on that subject.

“ I sentence the prisoner to imprisonment for life in the district jail, with light labor and fetters, according to the directions of the medical officer of the jail.”

GOVERNMENT

versus

- (1) GOLUK DEY KAIT, (2) GOOROOPERSAUD *alias* GOOROOCHURN DOSS, (3) RAMPERSAUD DOSS, (4) RAMSODOY KOONDOO, (5) KISHITO SAOOT, (6) BHEEKOO SAUTRAH, (7) PEYLARAM BERAH, AND (8) SREEDHUR KORUN.

CHARGE—RIVER DACOITY.

1849.

May 20.

THE prisoners were tried on the following charges, at the sessions held for zillah Hooghly, in March 1849.

In the first count, with committing a dacoity on a boat loaded with silk belonging to Takoordoss Mookerjee, master of Geyance Sheikh *Churrundar*, and plundering therefrom property to the amount of rupees 5,154-1 on the night of the 2nd January 1849, corresponding with the 20th Pouse 1255 B. S.; in the second count, with receiving a part of the plundered property in the above river dacoity, knowing it to be such; and, in the third count, with being accessaries after the fact to the above crime of dacoity.

The sessions judge, in his statement of convictions, reported the case as follows:

"It appears that a merchant despatched two boats laden with raw silk to Calcutta, the one contained eleven bales, the other eight bales: the latter was plundered near Naiserai. The facts of the boat having been plundered and the *dandees* bound and beaten, are proved by the evidence of the witnesses, Geyance Sheikh, the *churrundar*, Kishore Manjee, and Kunnye Naug.

"The *churrundar*, Geyance, declares he recognised two of the dacoits, Goluk Dey and Ramsodoy Koondoo. As the night was dark and he was thrown into the river, I can scarcely credit the latter part of the evidence as to the recognition, though it may be true.

"The witnesses Juddoo and Surroop Dandees state they are the *dandees* of the boat belonging to Ram Manjee; that their boat was hired by three persons at Neemtolah *ghaut*; that they took on board six other persons a few miles above Calcutta, and then proceeded up the river, where the dacoity (on Kishoree Manjee's boat) was committed, and the eight bales of silk were taken out of it, and brought to Calcutta in Ramlochun Manjee's boat; that on their return they halted near Kidderpore. At night they proceeded to Kolla. At Ooloberrra they took in the prisoner No. 6, Bheekoo Sautrah. The three dacoits and Bheekoo went to Shamgunge, where the property was taken ashore by several other persons who came on board.

"The three persons who hired the boat and who committed the dacoity are the prisoners No. 1, Goluk Dey; No. 2, Goorooopersaud *alias* Gooroochurn Doss; and No. 4, Ramsodoy Koondoo Teylee; and the person who came on board at Ooloberrra is the prisoner No. 6, Bheekoo Sautrah.

A conviction of receipt of stolen property can only be sustained when there is proof of the personal possession of such property by a prisoner, as by having the property in his own hands, or directly under his personal charge, or within his house, with his consent, and with a knowledge on his part of its having been obtained by theft or robbery. When proof of personal possession in some of these modes is wanting, there may be ground for a conviction of accessoryship after the fact in a theft or robbery, but not for that of the receipt or possession of the plundered property.

1840.

May 26.

Case of
GOLUK DEY
KATT and
others.

"The witnesses Juddoo Foolarawallah and Surroop Dandee state that, shortly after their boat reached Shamgunge, another boat brought Buggoo Saha, who, having taken some of the boat people and Surroop Dandee, went in search of the plundered property.

"Buggoo Saha states he was returning from the Court of Requests in Calcutta, when two *coolees*, by name Gungaram Berah and Modhoo Samooee, told him of the robbery, and that he (Buggoo Saha) should be well rewarded if he found the silk; that on his arrival at home the said *coolees* told him that certain persons whom they had heard talking, had said they were taking eight bales of silk to the country; that he (Buggoo Saha) instantly hired a boat, and taking the said two persons, proceeded to Shamgunge, where they arrived soon after the other boat. Buggoo Saha immediately demanded of Ram, manjee of the boat, which had been hired to commit the dacoity, where the stolen silk was; that at first he (the *manjee*) made some demur, but at length he confessed that it had been put on shore; that Buggoo Saha then, taking some *dandees* and Surroop, proceeded to the house of the prisoner No. 5, Kishto Saoot, who happened to be out at the time; but his nephew (having received a rupee) said the silk was in the house of Peylaram, whither they went, and saw Gooroochurn Doss, Kishto Saoot, and Sreedhur Korun smoking in the verandah; that on his (Buggoo Saha) demanding the silk, they denied having it, when Buggoo pushing or pulling aside a *tattee* he beheld eight bales piled up, and the prisoners Goluk Dey, Rampersaud Doss, and Ramsodoy Koondoo Teylee sitting near them. He placed those persons and the property in charge of the people whom he had taken with him, and then he fled to Calcutta direct, to inform the owners of the circumstances. The *churrundar*, on hearing at the door of the merchant what had occurred, instantly returned and informed the magistrate of Hooghly of the circumstances, who sent an officer of his court to Shamgunge to enquire into the matter.

"Gungaram and Modhoo, the *coolees* who overheard the parties talking about the eight bales of silk, say they were in a house with the prisoners Bheekoo Sautrah and Kishto Saoot, when the prisoner Rampersaud Doss came and told them they must take eight bales of silk to the country. These two persons went and informed Buggoo Saha of it, who, taking them, went in pursuit; and then they confirm the account given by Buggoo Saha, and of their having seen the property in charge of eight persons.

"The witness Munnoo Sheikh, on seeing two Calcutta boats at Shamgunge, wanted to know for what purpose they had come, when he heard from Persaud Mytee *chowkeedar* that they had brought stolen property. He (Munnoo) went to the house of Peylaram, where he saw the property, and the prisoners Gooroo-persaud *alias* Gooroochurn Doss, Rampersaud Doss, Ramsodoy

Koondoo Teylee, Peylaram Berah, and Sreedhur Korun at the house. He (Munnoo) also gave the property in charge of the police, but he does not know how it had been removed during his absence, when he went to make his report; at least when the *thanna moon-shee*, Hafizooddeen *burkundaz*, Alleeooddeen *peadah*, and Mirza *peadah*, came to the house of Peylaram, where the property had been left, they found the door fastened, but the property had been taken away from another side.

"A few days afterwards the police *omlah* from Hooghly came, and the *ghattee darogah* placed a watch all round the village, when those who had concealed the property in their houses became alarmed, carried, and threw the bales into the plains at night.

"The witness Munnoo Sheikh states he recognised the prisoner Kishto Saoot with a lattee in his hand, and that he (Munnoo) called to him (Kishen) by name, on which Kishen said: 'throw away the property and run away.' The finding of the bales is proved by the witness Bhojohuree Doolea.

"The following evening, Kishto Saoot was arrested by Munnoo Singh *burkundaz* with a bale of silk, marked No. 17, on his head; and the evidence of Munnoo Singh is corroborated by Beeroo *peadah* and Govurdhun Ghurrooe.

"Nine witnesses, viz., Susteeram Ghose, Muddun Haldar, Sham Ghose, Kalleechurn Bagdec, Hurish Ghose, Gopaul Parroovee, Nazim Shaikh, Gopaul Moochee, and Beeroo Moochee, prove that the plundered property belongs to Takoordoss. They are persons who were connected with the weaving, weighing, cutting, ticketing, and packing, the silk. Hence I think the crime of river dacoity is distinctly proved against the prisoners 1, Goluk Dey Kait, 2, Gooroopersaud *alias* Gooroochurn Doss, and 4, Ramsodoy Koondoo Teylee; and of receiving plundered property, knowing it to be such, against 3, Rampersaud Doss, 5, Kishto Saoot, 6, Bheekoo Sautrah, 7, Peylaram Berah, and 8, Sreedhur Korun.

"If further evidence against the prisoners Nos. 5, 6, 7, and 8 is required, it is to be found in the confessions of all four before the *darogah*, and of Nos. 5, 6, and 7 before the magistrate, and which confessions are proved by the several witnesses, namely, Takoordoss Baug, Gour Paramanik, Guddadhur Khatooee, Gour Doss, Keynaram Mytee, Jonardhun Mytee, Akil Mohumud, Loknauth Daha, Rajchunder Kooer, and Ramdhone Ghose. Under these circumstances, I convict the prisoners Goluk Dey Kait, Gooroopersaud *alias* Gooroochurn Doss, and Ramsodoy Koondoo Teylee, of river dacoity, and the prisoners Rampersaud Doss, Kishto Saoot, Bheekoo Sautrah, Peylaram Berah, and Sreedhur Korun, of receiving part of the plundered property in the above dacoity, knowing it to be such, and have sentenced them accordingly, viz. prisoners 1, 2, and 4, each to ten years' im-
 1849.
 May 26.
 Case of
 GOLUK DEY
 KAIT and
 others.

1849.

May 26.

Case of
GOLUK DEY
KAIT and
others.

sonment with labor and irons, and prisoners 3, 5, 6, 7, and 8, each to seven years' imprisonment, with labor and irons."

The prisoners having appealed to the Nizamut Adawlut, the case was laid before Mr. J. R. Colvin, who passed the following sentence :

" I confirm the conviction and sentence on the prisoners No. 1, Goluk Dey Kait, No. 2, Goorooopersaud *alias* Gooroochurn Doss, No. 4, Ramsodoy Koondoo, and No. 7, Peylaram.

" I convict No. 3, Rampersaud Doss, and No. 6, Bheekoo Sautrah, on the third of the charges against them, or as accessaries after the fact in river dacoity, and sentence the former to imprisonment for seven years, with labor and irons, and the latter to imprisonment for five years, with labor and irons.

" I acquit the prisoner No. 8, Sreedhur Korun.

" The sessions judge should be informed that a conviction of receipt of stolen property can only be sustained when there is proof of the personal possession of such property by a particular prisoner, as by having the property in his own hands, or directly under his personal charge, or within his house, with his consent and with a knowledge on his part of its having been obtained by theft or robbery. When proof of personal possession in some of these modes is wanting, there may be ground for the conviction of accessaryship after the fact, in a robbery, as in the case of the prisoners Nos. 3 and 6 in this trial, but not for that of the receipt or possession of the plundered property.

" Two of the witnesses, Juddoo and Surroop Dandee, were, on their own statements, accessaries after the fact in the dacoity. It does not appear from the magistrate's record that they were treated as persons to whom pardons should be given before recording their evidence criminatory of themselves. This point should be noticed for explanation by the magistrate."

GOVERNMENT

versus

FAIZ ALI HUJJAM.

1849.

CHARGE—MURDER.

June 4.

It is highly irregular and objectionable to allude to a paper, termed a dying declaration of a deceased party, as evidence, when the authenticity of that declaration has not been proved by witnesses in a trial, and when the declaration was not one made *in articulo mortis*, but, on the contrary, nearly a month before the date of death of the deceased, at a time when his wounds were not considered of a dangerous character.

THE prisoner was tried in the month of May 1849, for the murder of Purshadee Pandey, by the sessions judge of zillah Sarun, who thus stated the particulars of the case, together with his opinion as to its final disposal :

" It appeared in this case that, on the 21st February last, Purshadee Pandey, the deceased, a *brahmin* by caste, was sleeping

at his house in the village of Putherah, *pergunnah* Boab, with his two sons, Ramnidh and Toonmoon, when the prisoner Faiz Ali, a *hujjam* by caste, who resided close by in the same village, entered the deceased's house at midnight, armed with a drawn sword and dagger, and proceeded to the apartment of Ramnidh, the eldest son, who, with his wife, was sleeping in a north-west room of the compound, and inflicted no less than ten wounds upon the head and arms of the said Ramnidh. On hearing his cries for assistance, the father, Purshadee Pandey, who was sleeping in an adjoining room, ran to the spot and endeavoured to seize the intruder, when he himself received *three* severe cuts on his head and face from the prisoner's *sword* and *dagger*. By this time Toonmoon, (witness No. 2,) the younger son, who was in the verandah, had arrived in time to see his father thus severely wounded, and immediately grappled with the assailant and disarmed him.

"The villagers, hearing the noise, assembled; the door was opened, and they witnessed the prisoner in Toonmoon's custody inside the compound. Seetaram (witness No. 15) directed Toonmoon to get a light in order to examine the wounded men, and offered to take charge of the prisoner, meanwhile; but before the light was brought, the prisoner had effected his escape. He, however, gave himself up at the police *thanna* of Chupra on the 3rd March, charging Ramnidh with having *dishonored his wife*.

"The deceased, Purshadee, and his son, Ramnidh, were both admitted into hospital on the 23rd idem. At that time it was considered by the medical officer that the situation of the son, who was covered with wounds, was more precarious than that of the father; but the father Purshadee, who was 50 years of age, suddenly died of lockjaw on the 20th March (a month after the occurrence,) and his son, it is now considered, may possibly survive, being pronounced by the medical officer to be out of danger.

"The prisoner pleads justification, under the following circumstances. He states before this court that, three days before the occurrence, his wife, Musst. Meisree, went to the *brahmin's* house (Purshadee Pandey) with *uptun*, or perfumed flour for the body, required by Ramnidh's wife, and that Ramnidh took this opportunity of having criminal intercourse with her; that *after three days*, Ramnidh again came to his house at night, and entered the apartment where they were both sleeping on separate mats; that hearing his wife ask who it was taking liberties with her, he got up and saw Ramnidh in the act of criminal connection with his wife, upon which he took his sword and dagger, which were hanging up, and pursued the offender (Ramnidh) to his house, jumping the walls of their respective compounds; that Ramnidh, in defence, struck him when hard pressed with a stick, upon which he inflicted several wounds with his dagger, after

1849.

June 4.

CASE OF FAIZ
ALI HUJJAM.

1849.

June 4.

Case of FAIZ
ALI HUSSAM.

which he was apprehended by Toonmoon his younger brother,—denying the presence of the deceased, Purshadee Pandey, and stating that he explained to the assembled villagers upon their arrival what he had done, and they had allowed him to go away to his home; but hearing that he was sought after by the police, he had voluntarily given himself up to the *thannadar*. He cited two witnesses in support of his defence, but they denied any knowledge of the plea of justification set up.

“The law officer of this court acquits the prisoner of wilful murder, but considers him guilty on strong presumption of severely wounding the deceased, Purshadee Pandey, with a sword and dagger, from which wounds he subsequently died, and declares him liable to *deynt*, rejecting the evidence of the near relatives (sons of deceased) as insufficient by law to establish legal proof of wilful murder; or, in other words, he finds him guilty of culpable homicide.

“I disapprove of the *futwa*, being of opinion that the direct proof adduced by two eye-witnesses (although relatives,) supported by the strongest circumstantial evidence and the dying declaration of the deceased before death, leaves no doubt of the wilful intent to commit murder out of revenge for the previous dishonor of the prisoner’s wife. Had the prisoner killed Ramnidh on the spot, *in the act* of adultery with the prisoner’s wife, or *in pursuit*, after detecting the adulterer in the act, and also slain the father in the act of defending his guilty son, the homicide of the latter, according to the Mahomedan law, might have been deemed justifiable; but there is no evidence of the pursuit from one house to another. The prisoner alone states that he pursued the son, jumping over walls, to the father’s house, and there cut down and severely wounded the adulterer. The evidence, however, adduced, and weighing the probabilities of the case, as elicited upon trial, are opposed to the prisoner’s plea of legal justification. The deceased, before his death, deposed to having been awoken by noises, and to having seen the prisoner armed with a sword and dagger, standing in Ramnidh’s apartment, after the murderous assault upon his son; the *floor of that apartment* (as exhibited in the *dqrogah’s* map of the premises) *was found stained with blood;* therefore, without reference to the corroborative evidence of Ramnidh, the alleged transgressor, (which of course must be received with caution,) there is no doubt that the first assault was made in *Ramnidh’s apartment*. Again, the defence of the prisoner before this court differs from his defence at the *thanna* and before the magistrate. Before the magistrate, or at the *thanna*, he made no allusion to the crime committed, which had taken place three days previously. Before this court he stated that he had heard from his wife of Ramnidh having had forcible connection with her *three days before the event*, and

that upon the night of the occurrence the adulterer again entered the apartment (where he also was sleeping,) and in his presence had criminal connection with his wife. This latter statement I do not consider entitled to credit. The adulterer, finding *the husband in the same apartment* with the object of his illicit passion, would not probably have been so barefaced as to commit the act *in his presence*, either with or without the consent of the woman. The concurrent testimony of the dishonored wife in support of this statement, is equally unworthy of credit, and is probably given by her at the instigation of her husband, *who endeavoured to prompt her* when giving her evidence upon trial before the sessions.

“The object and intent of the prisoner was clearly to murder the son, Ramnidh, upon whom the first attack was made; and I believe that the prisoner proceeded to the house of the adulterer, at midnight, three days after the criminal intercourse, armed with a sword and dagger, to carry that felonious intention into effect, and that the death of Purshadee Pandey, the father, was caused by his attempt to apprehend the murderer, after Ramnidh had been cut down and severely wounded.

“Under these circumstances, according to Mahomedan law, the prisoner was not justified in attempting to kill Ramnidh,—not having caught him (as I believe) in the act of adultery; still less was he justified in inflicting severe wounds upon the *father, Purshadee Pandey*, (which eventually caused his death,) for attempting to apprehend the prisoner (who had feloniously entered his house,) after seeing his son (as he imagined) mortally wounded.

“I am, therefore, of opinion that the prisoner is guilty of the wilful murder of Purshadee Pandey, and should be sentenced to a long term of imprisonment, absolving him from the extreme penalty of the law with reference to the provocation received.”

BY THE COURT.

MR. J. R. COLVIN.—“The deposition of the sub-assistant surgeon, Mr. Picachy, is not sufficiently full and decided to satisfy me that the lockjaw, from which the deceased died, was caused by the wounds which had been inflicted on him by the prisoner. The sessions judge should have made further and particular inquiries on the point, with reference to the remark by the sub-assistant surgeon, that ‘the deceased had worms in the intestines, which produces lockjaw very frequently, but in this instance he did not suppose it did.’ And in such a case, the sessions judge should have placed upon record any reasons which may have prevented him from checking the deposition of the sub-assistant surgeon, by an examination also of the superior medical officer of the station.

1849.

June 4.

CASE OF FAIZ
ALI HUSSAM.

1849.

June 4.

Case of FAIZ
ALI HUSSAM.

"I convict the prisoner of severe wounding with intent to commit murder, and sentence him to imprisonment in banishment for fourteen years, with hard labor and irons.

"The first paragraph of this note to be communicated to the sessions judge with the sentence; and it must be added to him that it was highly irregular and objectionable in him to allude to what he terms the dying declaration of the deceased, as evidence, when the authenticity of that declaration was not proved by witnesses on the trial before him, and when the declaration was not one made *in articulo mortis*, but, on the contrary, nearly a month before the date of death of the deceased, at a time when his wounds were not considered of a dangerous character, his death at the subsequent period having occurred suddenly from lockjaw. It must be mentioned, likewise, to the sessions judge, that he should have stated the exact period of imprisonment which might appear to him adequate for the offence of the prisoner, and that he should have noted whether the prisoner was in jail or on bail, according to the directions of the circular on that subject."

HURCHUNDER ROY

SHUMSHER SHAIKH, MOLAM SHAHA, HAGOO SHAHA, SHETABDEE LUSHKUR *alias* SHEETUL, SAMEER SHAIKH *alias* MUDUN, ELAM SHAHA, MEEROO KOLOO, AND JUMAYUT ALI.

1849.

August 3.

When a sessions judge may think it proper to act upon the authority vested in him by Clause 2, Section 2, Regulation VIII, of 1818, as regards the demand of security from prisoners, who may appear, from

THESE prisoners, acquitted of dacoity at the sessions held for zillah Jessore, in April 1849, appealed to the Nizamut Adawlut, against an order of the sessions judge for security to be taken from them for good behaviour.

By THE COURT.

the record of a trial before him, to be of notoriously bad or dangerous character, he ought to give to the prisoners the opportunity of summoning all witnesses whom they may desire to have heard on the subject of their character and livelihood, and ought not to pass orders till after full consideration of the statements of such witnesses.

It is also not enough to record that there is sufficient evidence of bad character on the proceedings, but the particular statements or parts of the evidence from which this conclusion is drawn ought to be distinctly referred to in the order of the sessions judge.

MR. J. R. COLVIN.—"The Court, having had before them the proceedings held on the trial of Shumsher Shaikh and others, and the petition of appeal presented on behalf of the prisoners, Shumsher Shaikh, Molam Shaha, Hagoo Shaha, Sheetabdee Lushkur *alias* Sheetul, Sameer Shaikh *alias* Mudun, Elam Shaha, Meeroo Koloo, and Jumayut Ali, praying for the reversal of the order passed by the sessions judge, on the 18th of April 1849, directing them to furnish two securities for

100 rupees each for their good conduct, or to be imprisoned, with labor and irons, for two years each from that date, observe that in the trial on a charge of dacoity, the sessions judge records that, not being satisfied with the evidence to prove the dacoity, he thought it unnecessary to take any of the evidence for the defence. About 30 of the witnesses, who had been summoned by the prisoners, but not examined for the reason here stated, were witnesses to character.

"Although none of the evidence to character, adduced by the prisoners, was taken, the sessions judge, by a separate roobakree of the same date as that of his order of acquittal on the charge of dacoity, records that he is satisfied, from the proceedings in his own court and those before the magistrate; that the prisoners are persons from whom security for good behaviour should be required, and accordingly gives the directions as to security from which the appeal has been preferred. This mode of proceeding, in execution of the authority vested in sessions judges by Clause 2, Section 2, Regulation VIII. of 1818, is highly irregular. When a sessions judge may think it proper to act under that clause, he ought to give prisoners the opportunity of summoning all witnesses whom they may desire to have heard on the subject of their character and livelihood, and ought not to pass orders till after full consideration of the statements of such witnesses. The omission in this instance, to hear the witnesses who had been already actually summoned on the point by several of the prisoners, was a serious one, and requires to be specially explained by the sessions judge, Mr. James.

"It is not also enough to record that there is sufficient evidence of bad character on the proceedings, but the particular statements or parts of the evidence from which this conclusion is drawn ought to be distinctly referred to in the sessions judge's order: and it is to be borne in mind that the authority given by Clause 2, Section 2, Regulation VIII. of 1818, is defined to be for cases in which the prisoners may appear to be of *notoriously bad or dangerous character*.

"The Court annul the order passed by the sessions judge on the 18th of April last, directing the prisoners Shumsher Shaikh, Molam Shaha, Hagoo Shaha, Sheetabdce Lushkur *alias* Shectul, Sameer Shaikh *alias* Mudun, Elam Shaha, Mecroo Koloo, and Jumayut Ali, to furnish two securities for 100 rupees each for their good behaviour for two years, or to be imprisoned for two years each, with labor and irons, and desire that the proceedings be returned to that officer with instructions to pass fresh orders, after receiving and duly considering the evidence which may be named by the prisoners as above directed."

1849.

August 3.

Case of
SHUMSHER
SHAIKH and
others.

GOVERNMENT

versus(1) GOORBUKSH RAM, (2) PURSHAD RAM, AND (3)
SAMACHURN MOOKERJEE.

CHARGE—EMBEZZLEMENT.

1849.

August 31.

There is a discretion in the Nizamut Adawlut, under the terms of Sec. 6, Regulation XII. of 1833, to determine whether, in the territory under the Chota Nagpore Agency, an act is punishable as an offence, without reference to the provisions of the Mahomedan or other positive law. A treasurer, or an acting treasurer of the Lohardugga division of the Agency, convicted of criminal breach of trust in being accessory to the misappropriation of public funds by the principal European officer of the district, and a writer in the English branch of the office convicted of privy to such criminal breach of trust. Under the peculiar circumstances of the case, the two first named prisoners sentenced to imprisonment for one year, and the last prisoner to imprisonment for six months.

THIS case was tried at the sessions held at Hazareebagh in June 1849, by the deputy commissioner, who sentenced the prisoners to 18 months' imprisonment each.

The specific charges against them were thus detailed :

1st.—With having, in and between the months of January 1846 and October 1848, embezzled, and having been accessory and privy to the embezzlement of, the sum of rupees sixty-six thousand, seven hundred, and thirty-two, one anna, and nine pie, rupees 66,732-1-9, or thereabout, from the Government treasury of the Lohardugga division, and whereof the sum of rupees nineteen thousand, nine hundred, and forty-five, eight annas, and three pie, rupees 19,945-8-3, or thereabout, is still deficient from the Government treasury of the Lohardugga division.

2nd.—With having, in and between the months of January 1846 and October 1849, embezzled, and having been accessory and privy to the embezzlement of, the sum of rupees nineteen thousand, nine hundred and forty-five, eight annas, and three pie, rupees 19,945-8-3, or thereabout, from the Government treasury of the Lohardugga division, and which sum is still deficient in the Government treasury of the Lohardugga division.

The following was the crime considered to be established against the prisoner :—

Being accessory and privy to the embezzlement of the sum of rupees sixty-six thousand, seven hundred, and thirty-two, one anna, and nine pie, rupees 66,732-1-9, or thereabout, from the Government treasury of the Lohardugga division, and whereof the sum of rupees nineteen thousand, nine hundred, and forty-five, eight annas, and three pie, rupees 19,945-8-3, or thereabout, is still deficient from the Government treasury of the Lohardugga division.

The remarks recorded by the officiating deputy commissioner in his statement of convictions were as follows :—

“ The prisoners 1, 2, and 3, are charged, firstly, with embezzlement, and secondly, with being accessory and privy to the same. During the period in which the embezzlement is stated to have taken place, prisoner No. 1 was the treasurer, No. 2 the purkeah, and No. 3 the head writer of the Lohardugga collectorate. Prisoners Nos. 1 and 2 plead that Captain Richard Ouseley, the late principal assistant, embezzled the amount stated in the calendar, and that they are

Under the peculiar circumstances of the case, the two first named prisoners sentenced to imprisonment for one year, and the last prisoner to imprisonment for six months.

not guilty as accessaries, being obliged to attend to the orders of their superior. Prisoner No. 3 denies his guilt, and states that Captain Ouseley's account was with the treasurer as a banker. But of this there is not the slightest proof adduced in the trial. Captain Ouseley, in his written declaration (copy of which is filed with the magistrate's proceedings,) says that he *alone* is accountable for the deficiency in the treasury, which, on the 15th of October 1848, amounted to rupees 19,945, 8 annas, 3 pie. The account-books containing the writer's writing and bearing Captain Ouseley's signature, and which make no mention of interest, will shew that Captain Ouseley's dealings were with the treasurer not as a banker, but as the treasurer, and that the amount appropriated was the money of the treasury; and if further proof on this point were required, it can be given by mentioning Captain Ouseley's extensive dealings with the purkeah while he was in charge of the treasure chest, and with whom, as a private individual, he (Captain Ouseley) never professed to have an account. Of the first part then of the charges I acquit, in concurrence with the opinion of the jury, the three prisoners.

"The evidence goes to shew that the custom was for Captain Ouseley, when he wanted money, to send a private order, sometimes in Hindee and sometimes in English, through one of his chuprassces, to the treasurer or to the purkeah, whoever might be in charge at the time of the treasure chest, and not unfrequently such orders were taken to the writer, who either went in person to the treasury and got the money, or ascertained that it had been paid; that all such orders were retained until the end of the month, when they were returned to Captain Ouseley, after he had signed a private account with the treasurer, who, it would appear, had no power to lay it before that officer, until it had been thoroughly compared by the writer. The entire evidence will point out that all accounts were first taken to him for comparison. The books which had been kept by both the purkeah and treasurer, will shew that thousands of rupees had been paid through the writer, and in fact the payments are of such a miscellaneous nature that it is clear he was Captain Ouseley's factotum, and, as stated by witness No. 1, in his pay. There is no difficulty then in shewing that all three were accessaries and privy to embezzlement. Surely those in charge of the treasure chest, who paid away money by illegal orders, knowing these to be illegal, must be accessaries; and of such a class are prisoners 1 and 2. Surely he must be an accessory, who, knowing that the money received from the treasury has been paid by an illegal order, takes it, and makes it over to another, or spends it, according to another's orders; and of this kind is prisoner No. 3. He would justify his conduct by asserting that the transactions were with a mahajun, but he forgets that the bulk of his dealings were with the purkeah, who has himself stated that, while in

1840.

August 31.

Case of
GOORBUKSH
RAM and
others.

1849.

August 31.

Case of
GOORBUKSH
RAM and
others.

charge of the treasure chest, he had no private money of the treasurer's save a few hundred rupees. This plea then, like others, must fail, and the entire defence must fall to the ground when it can be shewn, by the evidence of witnesses Nos. 1 and 12, that money was paid out of the treasury, before him, to meet such illegal orders, while there was no other money in the treasury than that belonging to the Company. For these reasons I, in like manner, with the concurrence of the jury, convict on the second part of the charge, but see fit to deal leniently with the prisoners, more especially for the reason that it is sworn to that the late Governor General's agent was told by one of them of what was going on long before the defalcation was detected; and it must also be added that, during this long period, there is no proof that the prisoners (strong as were the temptations) helped themselves to any money. I therefore passed sentence upon them of imprisonment as recorded, considering that there was no ground for awarding a higher or severer punishment towards any one person."

The proceedings were subsequently brought before the Nizamut Adawlut on the appeal of the prisoners, when the Government pleader attended for their prosecution, and Baboo Ramapershad Roy and Kishen Kishore Ghose for their defence.

BY THE COURT.

MR. J. R. COLVIN.—"The prisoner No. 1, Goorbuksh Ram, has admitted throughout that he gave the sums advanced by him to Captain Ouseley, and referred to in this trial, from the public treasury, on the private orders of that officer. His defence is that he acted under the orders of his superior officer, and that the operation of the general regulations having ceased in the Chota Nagpore territory, and no rule having been declared by Government placing the same responsibility upon treasurers in that country as exists where the regulations are in force, he has been guilty of no offence for which he is criminally punishable. He further pleads that he has shewn, by a respectable witness, that he thrice gave warning to the agent to the Governor General, of the employment by Captain Ouseley of the public money for his private purposes, and that the agent did not interfere upon such information.

"The argument in this Court for the prosecution has been that, by Article I. of the Rules passed by the Government, under date December 9, 1833, which rules, under Section 5, Regulation XIII. 1833, have the force of law, the provisions of the regulations, in regard to all points of administration not mentioned in the rules, were continued in force in Chota Nagpore territory, except in so far as they might thereafter be altered by special instructions, and that the offence of the prisoner is therefore punishable with reference either to Section 12, Regula-

tion II. of 1793, or to Regulation II. of 1813. The argument in reply has been that the rules alluded to are too vague and indefinite to form a ground upon which a criminal penalty can be inflicted; and that they relate only, as appears from the whole purport and context, to the acts and powers of the European officers of the agency.

"I do not think that these rules can be considered to have been passed as applicable to the duties of the different native officers of the agency. But there is a discretion in this Court, under the terms and spirit of Section 6, Regulation XIII. of 1833, to determine whether in this particular tract of country an act is punishable as an offence, without reference to the provisions of the Mahomedan or of any other positive law; and I have no hesitation in declaring the act of the prisoner, Goorbuksh Ram, to be so punishable. He committed a clear breach of what he must have known to be the trust of his office, in paying away the public money upon the *private* orders and for the personal benefit of his superior. He could not have been ignorant that, being a servant of the Government, he was bound to render obedience only to the official and formal orders of his superior, and I should, in conformity with the decision of this Court in the case of Government *versus* Lokmee, (Nizamut Reports, vol. II., pages 229 to 233,) have held him to be punishable even had he received formal orders, but had been at the same time distinctly apprised that the large sums of money drawn by his superior belonged not to him, but to the Government, and were taken for appropriation to his private use.

"I therefore convict the prisoner No. 1, Goorbuksh Ram, as guilty of a criminal breach of trust. At the same time, I am disposed to give credit to the witness, who deposes that this prisoner gave intimation of the improper issues from the treasury at several times to the agent to the Governor General, who was the superior officer in the territory, and, as observed by the sessions judge, there is no proof of any personal use by the prisoner of any portion of the advances. On the whole, I think that sentence of imprisonment for one year will be adequate to the offence, and I reduce the sentence passed by the sessions judge accordingly.

"I convict the prisoner No. 2, Purshad Ram, who had charge of the treasury from 1st November 1846 to 18th August 1847, and who made large issues from it of a similar kind during that period, of the same offence, and sentence him to the same punishment, or imprisonment for one year. He has pleaded a receipt from the treasurer, when that officer resumed charge from him, to the effect that he had received over the then apparent amount in the treasury without balance. But such a receipt could only be of avail as an answer to any civil proceeding instituted against him by the treasurer himself.

1849.

August 31.

CASE OF
GOORBUKSH
RAM and
others.

1849.

August 31.

Case of
GOORBUKSHI
RAM and
others.

"The prisoner No. 3, Samachurn Mookerjee, was a writer in the office, but in no way answerable for the custody of the money in the treasury. That he was privy to the unauthorized issue of that money upon the private notes of Captain Ouseley, I cannot doubt; for, though the direct evidence to his cognizance of the actual taking of the money from the public chest is, in part, inconsistent, and has also been met by counter-evidence, yet it is certain that, for about three years, he must have seen that Captain Ouseley's private orders for money came to be cashed to large amounts at the public cutcherry, where the treasurer could not have his private funds, and the account-books of the first and second prisoners kept by them, with Captain Ouseley, shew very many of the items advanced to that officer to have been so advanced through this prisoner, who struck the balances exhibiting a growing deficiency, on the repayment of the advances from time to time, and wrote the amount in English in the books in his own hand. I do not refer to the circumstance that, on the first page of the treasurer's book, the amount advanced is expressly noted as having been taken from the public treasury, for the book was kept in Hindee and the prisoner may *possibly* have been ignorant of that language. But the proof afforded by the nature of the entries in the account-books themselves, and by the position of this prisoner in the office, taken together with the oral evidence in the case, leaves no room for question in my mind as to a legal, as well as moral, conviction of his guilt. I consider him less criminal than the other prisoners, inasmuch as his offence was of privy only. I convict him of privy to a criminal breach of trust, and reduce the sentence on him to imprisonment for six months. All the reduced sentences to be calculated from the date of the original sentence."

GOVERNMENT

KISHTO CHOWKEEDAR.

CHARGE—CULPABLE HOMICIDE.

1849.

Sept. 18.

A chowkeedar, convicted of culpable homicide by having used unnecessary violence in apprehending a thief, sentenced to be imprisoned for one year, and to pay a fine of rupees ten in lieu of labor.

THE sessions judge of East Burdwan, who tried the prisoner at the sessions held for that district in August 1849, thus reported the circumstances of the case in his letter of reference to the Nizamut Adawlut:—

"Tarachand Sircar states that he was asleep in his house in mouzah Dhamoor on the night of the 15th Jyest 1256 B. S., corresponding with the 27th May 1849; that at about 2½ puhurs he was awake by his sister-in-law, Hurroo Bewah, who was asleep in the next room, calling out, and by the noise of thieves pushing at

his door; he got up and gave the alarm, on which Kishto chowkeedar who was going his rounds came up to his house; he then ran out and saw the chowkeedar following Buhadoor Dome, (since deceased,) whom he had seized about 15 or 16 cottahs off on the north side of the Haut Kanah tank, and wounded with a spear; the other thieves, 3 or 4, had escaped, and he could not recognize them; after this the other prisoner, Noyan Bagdee, with several of the villagers, came up, and the deceased Buhadoor Dome was taken to the village cutcherry. This witness says he did not see the prisoner Kishto chowkeedar actually beat the deceased, he saw them scuffling, and the wounds after he had been seized: he thought Buhadoor Dome shewed fight, and Kishto chowkeedar, prisoner, to save himself beat him. The deceased, on being apprehended, would not give up his name, and he may have been beaten on his way to the cutcherry; but his evidence is ambiguous on this point. Deceased lived $1\frac{1}{2}$ coss off, never used to come to his house, though he has seen him in his village, and was called a bad character, no property was stolen, the stick and sickle with saw-like teeth, produced in court, were found on the ground when and where the deceased was apprehended. Before the magistrate this witness stated that Kishto chowkeedar had a stick, in this court a spear. He corroborates what he stated before the police in the mofussil, and his deposition before the magistrate does not quite tally with his deposition taken in this court."

After detailing the evidence the sessions judge proceeded:—

"Buhadoor Dome deceased appears to have died on the night of the 28th May 1849, from the wounds and beating he received, or about 24 hours after the occurrence, and on his way from the village to the sudder station; he was a man of about 40 years of age, and though the witnesses say he was a bad character, there is no proof of it. He received a blow on his head, a compound fracture of the right leg, and his 8th, 9th, and 10th ribs on the left side were broken; the blows were stated to have been inflicted by a stick; and though the spear was used, the wooden part of it must have struck the deceased. These blows and beating, the native doctor in his deposition, and Dr. Bond, the assistant surgeon, in his report dated 29th May 1849, state, were sufficient to cause death.

"I have no hesitation in saying that I consider the deceased was most unmercifully and unnecessarily beaten; and it is hardly possible that Kishto chowkeedar, who was armed with a spear, should alone have struck him so often simply in self-defence, and that there should have been no visible marks of any blow having been inflicted with the iron end of the spear, the blows apparently being those of a wooden instrument. I think that Kishto chowkeedar is guilty, from the evidence and the otherwise strong presumption of the case, of culpable homicide, on which charge

1849.

Sept. 18.

CASE OF KISH-
TO CHOWKEE-
DAR.

1849.

Sept. 18.

CASE OF KISH-
TO CHOWKEE-
DAR.

he has been committed; and I cannot relieve my mind of the impression that deceased was not only beaten when apprehended, but subsequently; the witnesses will not depose to such a fact, but their replies to questions bearing on this point, were not satisfactory.

“The futwa of the law officer declares that culpable homicide is not proved against the prisoner, and consequently acquits him, and observes that the proper crime was murder, and as the prisoner is not charged with that offence, he cannot be punished for culpable homicide, the weapon used being of steel or iron, making the crime murder and not culpable homicide. This may be a correct futwa under the, Mahomedan law, but I cannot reconcile it to any thing I have ever heard of or read in English law; and if stress is to be laid on the instrument used, and futwas are to be accepted accordingly, I would suggest that magistrates be directed invariably to commit all prisoners for murder whenever a steel or iron weapon may be used, or prisoners must, however guilty they may be proved to be, escape by a mere quibble. In this instance I am of opinion that Kishto chowkeedar is guilty of the culpable homicide of Buhadoor Dome, and would recommend his being imprisoned with labor in irons for the space of three years, labor commutable to a fine of 20 rupees.”

BY THE COURT.

MR. J. DUNBAR.—“I concur with the sessions judge in thinking that the deceased, Buhadoor Dome, was most unmercifully and unnecessarily beaten; but it seems evident that the beating was not inflicted by the prisoner Kishto chowkeedar alone. His father Noyan Bagdee admitted, before the magistrate, that he had struck the deceased, and Tarachand Sircar, witness 1, stated in his deposition before the sessions judge, that three or four of the villagers beat the deceased with cudgels after he had been secured. We may thus, I think, with safety relieve the prisoner of one-half of the responsibility attending the beating. Bearing in mind that the death of Buhadoor Dome was the consequence of his own criminal intention to commit theft, and that the prisoner chased him and secured him in execution of his duty, and with reference to the share taken in the beating by others as noticed above, I think it would be neither just nor expedient to visit his offence with a very heavy penalty. Convicting Kishto chowkeedar of culpable homicide, the Court sentence him to be imprisoned for one year and to pay a fine of rupees ten within fifteen days, and in default thereof to labor without irons.

MUSST. SOOKREE

versus

BOODHUN BHOOYA.

CHARGE—WILFUL MURDER OF HIS WIFE.

THE sessions judge of Midnapore, who tried the prisoner on the above charge at the sessions held for that district in June 1849, thus reported the case in his letter of reference to the Nizamut Adawlut :

“ The prosecutrix deposes that, on the 19th Bysakh 1256, corresponding with the 29th April 1849, on her return home from the jungles, where she had been to cut wood, she found a burkundaz enquiring for her, who told her that her daughter Jhonia was dead. She accompanied him to her son-in-law’s house, and in the verandah she saw the lifeless body of her daughter. There were two extensive wounds on the neck, and one on the back, on the left side; and the spot where the body was lying was saturated with blood.

“ The witness Musst. Hurro Biswee corroborates the above testimony, and further deposes that she went to prisoner’s house about 3 P. M. of the 19th Bysakh 1256, to borrow a string; she then saw the deceased Jhonia lying on the ground in the verandah, and blood was flowing from her body, and a knife or other weapon sticking in her back; the prisoner was standing over her, and threatened to kill witness if she approached; she immediately ran away and gave the alarm. The other witnesses confirm the statement of prosecutrix. The body exhibited, at the inquest held in the mofussil, two severe wounds on the neck, apparently inflicted with an axe, and one on the left side of the back in which a knife, buried to the hilt, was sticking. The civil assistant surgeon, who made a *post mortem* examination, deposes that the wounds in the neck of the deceased Jhonia were quite sufficient to account for the death of the deceased; that the vertebræ were entirely severed, including the spinal marrow; and that the knife, which was still in the body when it reached the hospital, had penetrated so deeply into her side that it was with difficulty he could extract it.

“ The prisoner, before this court, pleads *not guilty*, but offers no defence. Before the magistrate and the darogah he confessed that he had murdered his wife, and that he was prompted to the act from a belief that she had carried on an intrigue with one Jeetoo Dangur; but he produced no evidence whatever to support this assertion.

“ The futwa of the law officer declares the prisoner guilty of the crime with which he is charged, and declares him liable to kissas; and in this finding I concur.

1849.

September 21.

Capital sentence passed on a prisoner who had murdered his wife, a young girl not arrived at puberty, from some unascertained motive. An inquiry which was made by order of the Court, shewed that there was no doubt as to the perfect sanity of the prisoner.

1849.

September 21.

Case of
BOODHUN
BHOOYA.

"Nothing has been elicited in the trial to account for the deliberate and bloody murder which the prisoner has perpetrated. His story of his wife's intriguing with Jeetoo is not corroborated in any way by the witnesses; and the evidence of the assistant surgeon, which represents that deceased could not, from the appearance of her person, have had sexual intercourse with any one, renders it altogether improbable and unworthy of credit. There is not, in my opinion, a single extenuating circumstance that could warrant clemency being shewn to the prisoner, and why the extreme penalty of the law should not be inflicted; and I accordingly recommend that sentence of death be passed upon him."

BY THE COURT.

MR. J. DUNBAR.—"No obvious and credible cause for the murder of his wife, Jhonia, by the prisoner, is to be found in the proceedings. The motive assigned by the prisoner himself is jealousy; but this is not reconcilable with the evidence, or with the age and condition of the deceased, who was apparently not yet pubescent. The absence of a credible motive for the murder, coupled with the circumstance of the prisoner's attempt to destroy himself, as intimated in his own confession and supported by the marks of the rope upon his neck, induces a doubt of his sanity which it is desirable to clear up. The sessions judge will therefore make the necessary inquiry as to the state of mind of the prisoner (both remotely and immediately) previous to the murder, and report the result, together with his own observations as to the condition of the prisoner when put upon his trial before him."

In reply to the above requisition the sessions judge stated:

"It would appear that the prisoner Boodhun Bhooya has not, from his childhood to the present time, shewn any symptoms of insanity. The fact of his having attempted to commit suicide, after the perpetration of the crime with which he stands charged, may be inferred from the evidence that has already been taken on the point; but it is not proved."

BY THE COURT.

MR. J. DUNBAR.—"The sessions judge, in submitting the case said: 'nothing has been elicited in the trial to account for the deliberate and bloody murder which the prisoner has perpetrated.' The absence of any apparent motive induced a doubt of the prisoner's sanity. That doubt has been completely removed by the result of the inquiry held upon this point, and I can find no palliation for the guilt of Boodhun Bhooya. He was in an especial manner bound to cherish and protect his young wife, but he ruthlessly butchered her. In addition to the two wounds on the neck with an axe,

he had plunged a knife into the unfortunate girl's body, with such force that it was with considerable difficulty the civil surgeon could extract it. I would sentence the prisoner, Boodhun Bhooya, to be hanged."

MR. J. R. COLVIN.—"The evidence to the prisoner's entire sanity is uniform and strong. He deliberately murdered his wife, a young girl not yet arrived at puberty, from some unexplained motive of brutal passion. I concur in the capital sentence, seeing no ground whatever of extenuation."

1849.

September 21.

Case of
BOODHUN
BHOUYA.

JUGGESSUR ATTAI

versus

PEETUM SINGH, SEEBNARAIN SINGH *alias* SEEBNARAIN ROY, SEEBHOO GHOSE *alias* SEEBOO SINGH, THAKOORDOSS BUSTUM, KUNYE ROY, RAMCHAND ROY, KULEEAN GHOSE *alias* KULEEAN SINGH, SONATUN NAIK, NEHAL SINGH, SOOBRUN SINGH, KISTO DYAL SINGH, AND SEEBOO SINGH JEMADAR.

CHARGE—MURDER.

THE prisoners were charged, in the first count, with murder, in having seized and assaulted Narain Attah, and wounded him with a Gerass, or other weapon, from the effects of which he died on the 1st February 1849, and, in the second with aiding and abetting in the above assault and murder.

This trial originally came in June 1849, before Mr. Raikes, sessions judge of Midnapore, who acquitted three prisoners,* but deferred recording any opinion regarding the others pending the arrival of certain witnesses, who were named as able to establish an *alibi* in favor of one prisoner, Seeboo Singh jemadar. Mr. Luke, who succeeded Mr. Raikes as sessions judge of the district, and concluded the trial in the month following by taking the evidence of the witnesses referred to, thus reported it in his letter of reference to the Nizamut Adawlut:

"The particulars attending this trial were thus recorded by the late judge. 'The prisoners were charged with instigating an assault which was committed on the person of the deceased by some nukdees, from the effects of which death ensued, and with having rewarded and protected the perpetrators afterwards. The prosecutor stated that his father, the deceased, had been at

1849.

September 21.

The postponement of a trial after its commencement by one judge, in order that only some remaining evidence may be taken before another judge, by whom the trial will be completed, and sentence passed, or the trial reported to the Nizamut Adawlut, is strictly legal according to the terms and intent of Section 49, Regulation IX. 1793. The Circular Order No. 111

of April 2, 1812, is therefore of full force under Section 3, Regulation X. 1796, which declares the Nizamut Adawlut to be "empowered to prescribe the forms and conduct to be observed by the courts of circuit, in all cases provided for by the regulations, agreeably to their construction thereof."

* N. B. Brevois.
Hulodhur Roodroo.
Taruchand Bose.

1849.

September 21.

Case of PEE-
TUM SINGH
and others.

enmity for some time with the manager of the Chutturgunge factory, Mr. Brevois, and the amlah, and that many attempts, had been made by these parties to get possession of his person, but had hitherto failed, till the 28th of January last, when his father was returning home from Gurbettah, in company of a thanna burkundaz (whose escort he had requested from the darogah) and of some of his own people, and was waylaid by a band of nukdees, at a place called Rughoonathpore. These men first required the burkundaz to give up the deceased, as a person indebted to the factory, and for whose apprehension they had been sent; but as the burkundaz refused to do so, and sent for assistance to the thanna, and to alarm the neighbourhood, two of the nukdees held the burkundaz, while another went behind him, and struck the deceased a violent blow on the head, with a pole-axe and felled him to the ground: another then struck at him, but the blow, being partially warded off by the burkundaz's *lattee*, only cut the deceased severely on the hand. The nukdees then retired, and the wounded man was carried back to the thanna in a state of insensibility, and, without recovering his reason, expired on the 1st of February. These facts were fully detailed on the trial in the depositions of the eyewitnesses; and their evidence was most positive and direct as to the identity of the parties who struck the deceased, and as to those of the prisoners who were present, aiding and abetting the outrage. But as one of the prisoners, named by them all as actively engaged in the assault, has pleaded an *alibi*, and states in his defence that, on the very date of this occurrence, he was at the cutcherry of the Hooghly collector, and filed a petition endorsed with the usual certificate that the party presenting it had been identified on the 15th of Maugh, (the day before the assault,) I deemed it absolutely necessary to take the evidence of these parties, and was obliged to postpone the case on the 11th of June, and send a proceeding to the magistrate to cause their attendance at this court through the Hooghly authorities. As, with the exception of these witnesses, the whole of the evidence for the prosecution and defence had been completed, I called for a futwa from the law officer regarding the guilt or innocence of three prisoners, viz. N. B. Brevois, Hullodhur Roodroo, and Tarachand Bose, under Circular Order No. 302, of the 17th December 1824, as the evidence of the witnesses sent for could not possibly affect them. It will be evident to the Court that, though these witnesses were only named by one of the prisoners and are only expected to speak to his defence, yet should they satisfy this court that the party pleading the *alibi* could not by any possibility have been present at the assault, as stated so positively and directly by the eyewitnesses, who state themselves to have

been well acquainted with his person, this fact will materially shake their evidence regarding the identity of all the other prisoners, some of whom they were only able to point out after apprehension. I therefore deemed it discreet and proper to defer giving any opinion regarding their guilt also, until the evidence of the remaining witnesses could be recorded.'

"The circumstances above related are fully established by the evidence of the witnesses, which is also most positive as to the identity of the parties who struck the deceased, and as to those who were present, aiding and abetting in the assault.

"At the inquest held in the mofussil, the body of Narain Attah exhibited a wound on the head and another on the left wrist, the former causing fracture of the skull. The sub-assistant surgeon, Issur Chunder Gangoolce, deposed to a severe fracture of the skull produced by a blow of some blunt weapon causing extravasation of blood on the brain, and an incised wound on the wrist produced by a blow of some sharp instrument, the former, in his opinion, being sufficient to cause the death of the deceased. The body in other respects exhibited a healthy appearance. The prisoners all plead *not guilty*, and in their defence set up *alibis*, which they fail to establish. The witnesses in behalf of Seeboo Singh Jemadar, for whose attendance my predecessor was compelled to postpone the trial, depose to the prisoner's presence at the collector's office at Hooghly, but only one of the three cited can specify the date on which he was there. His testimony, however, is so improbable as to be unworthy of credit. He states that he saw the prisoner in the collector's cutcherry at Hooghly talking to one Heeraloll on the 15th of Maugh, that he never saw the prisoner Seeboo Singh before nor since, but that he enquired who he was from Heeraloll. Witness's memory, so retentive as it is regarding the date when he saw the prisoner, is not equally so as regards the date and month on which he appears before this court to give evidence, as he declares his ignorance of both. The other two witnesses cannot state with certainty on what date in Maugh they saw the prisoner at Hooghly; and their testimony is of little value in support of prisoner's plea that he was there on the 15th of Maugh. The copy of the petition, the original of which is said to have been filed on the 15th of Maugh, is no proof that the prisoner filed the latter in person; and he entirely fails, in my opinion, to invalidate in any way the evidence for the prosecution.

"The futwa of the law officer declares Sonatun Naik guilty, on strong presumptive proof, of assaulting and wounding deceased, from the effects of which Narain Attah died, and liable to punishment by secasut, extending even to death; Seeboo Singh Jemadar, of assaulting and wounding the deceased, and aiding

1849.

September 21.

Case of PEE-
TUM SINGH
and others.

1840.

September 21.

Case of PEETUM SINGH and others.

and abetting in the same, and liable to punishment under akoo-but ; and Peetum Singh, Seebnarain Singh *alias* Seebnarain Roy,, Seebhoo Ghose *alias* Seeboo Singh, Thakoor Doss Bustum, Kunnye Roy, Ramchund Roy, Kuleean Ghose *alias* Kuleean Singh, Nehal Singh, Soobrun Singh, and Kishtodyal Singh, guilty of aiding and abetting in the said assault, and liable to punishment under tazeer.

“ I concur in this finding. There are no extenuating circumstances that can be pleaded in behalf of any of the prisoners. It is clear from the evidence that they had been endeavouring, for some days previous to the assault, to seize the deceased ; and that they were fully prepared to carry their illegal determination into effect at all hazards, is proved by their defiance of the police burkundaz, whose presence seems to have been no protection whatever against the brutal attack that has terminated in the death of the deceased. I consider the prisoner Sonatun Naik, by whom the blow that caused the death of Narain Attah was inflicted, liable to capital punishment, and Seeboo Singh Jemadar, as principal in the second degree and equally culpable with Sonatun, to imprisonment for life in transportation, and the other prisoners to be imprisoned for seven years each with labor in irons.”

BY THE COURT.

MR. A. DICK.—“ This is one of the most outrageous, premeditated and unprovoked attacks, in open defiance of the police, that has ever come to my knowledge, attended too with murder. That it was perpetrated at the instigation of the offender's master, or with his connivance and that of his amlah, there can be little doubt, both from the contents of the two petitions of the deceased to the police, for protection, filed in the case, and from the report of the record keeper of the magistrate, shewing that numerous false charges had been preferred respectively by the parties against each other. And it is to be deeply regretted that the evidence does not bring their guilt home to them. As for the prisoners now before this Court, they are evidently the hirelings of the others above noted. But their blood thirstiness and cowardly ruffian attack upon the wretched victim of their master's revenge, render them of course justly obnoxious to the utmost rigour of the law.

“ The fact that Sonatun Naik inflicted the cruel mortal wound which caused the death of the deceased, has been proved beyond the least doubt. Indeed, I never had before me testimony more trustworthy and clear, consistent yet varied. I would therefore convict him of the murder, and sentence him to suffer the utmost penalty of the law, by being hung at the very spot where the crime was committed. The ruffian attack of Seeboo Singh Jemadar has been as clearly proved, and his

defence of an *alibi* is not worth a moment's consideration. The evidence for it, in fact, proves nothing to the purpose; and it is to be well observed that the defence set up by him before the magistrate is totally and diametrically opposed to it, inasmuch as it set up an *alibi* at his own village. This *alibi* at Hooghly must have been an afterthought! I would convict him, as proposed, of being a principal in the second degree, and sentence him to transportation for life. And I would convict all the rest of aiding and abetting in the assault and murder, and sentence them to fourteen years' imprisonment with labor in irons. I may observe that the late magistrate's certificate, filed by Seeboo Singh, tells too truly that he had been a most active latteeval or hired ruffian; and that the other ten prisoners, Peetum Singh, Seebnarain Singh *alias* Seebnarain Roy, Seeboo Ghose *alias* Seeboo Singh, Thakoordoss Bustum, Kunnye Roy, Ramchund Roy, Kulecan Ghose *alias* Kullecan Singh, Nehal Singh, Soobrun Singh, and Kishdoyal Singh, were not mere lookers on, but, as the evidence satisfactorily shews, more or less actively engaged in aiding and abetting in beating the deceased and his followers, and in holding back the burkundaz.

"The conduct of the burkundaz Thakoordoss Misser was highly praiseworthy. He did his best to protect the victim of the assailants, and, though overpowered, he never left him. He also had the presence of mind to send off for assistance from the village and from the thanna, and thus in all probability prevented the body being carried off by the ruffians. He should, therefore, be handsomely rewarded; and the magistrate may be directed to apply to the superintendent of police, under Section 15, Regulation XVII. 1816, to sanction the grant of 50 Company's rupees and a sword worth 50 Company's rupees more.

"I find the deceased presented two petitions several days previous to the fatal attack, declaring that he was in constant dread of an attack, and that his liberty and life were in danger. These should have been forwarded to the magistrate, and he should immediately have bound over the manager of the factory, in a large sum, to keep the peace, he, and all his dependants, in respect to the deceased.

"Mr. Ritchie, the barrister, has this day appeared for the prisoners, and with great ability urged two objections to the validity of the trial. The 1st, that the prisoners were not aware of the heinousness of the charge on which they have been tried. However, the contrary was proved to him, by reference to, and perusal of, the magistrate's roobakaree, or proceeding of commitment; of the question put to the prisoners singly by the court at the trial; and of the calendar of the commitment. The 2nd, that the judge taking up the postponed trial should have commenced anew. This I met, by reading to him Circular

1819.

September 21.

Case of PEE-
TUM SINGH
and others.

1849.

September 21.

Case of PEE-
TUM SINGH
and others.

Order No. 111, dated 2nd April 1812, as perfectly in point, and excellently adapted to our system of *record verbatim*, and consistent with common sense and sound justice. In conclusion, I must observe that the case has been most carefully tried by both the judges, and by the mooftee, as shewn by his elaborate and well considered futwa. The case must be laid before another judge."

MR. J. R. COLVIN.—"I entirely concur with Mr. Dick, in thinking that the guilt of the prisoners in this case has been clearly established, and in the sentence proposed by him, viz.

"Capital sentence on Sonatun Naik, on a conviction for assault and murder, to be executed at the spot where the crime was committed; imprisonment in transportation for life on Seeboo Singh Jemadar, on a conviction as principal in the second degree in assault and murder; and imprisonment with hard labor and irons, for fourteen years, on Pectum Singh, Seebnarain Singh *alias* Seebnarain Roy, Seeboo Ghose *alias* Seeboo Singh, Thakoordoss Bustum, Kunye Roy, Ramchand Roy, Kulcean Ghose *alias* Kulcean Singh, Nehal Singh, Soobrun Singh, and Kishtodyal Singh, on a conviction of aiding and abetting in assault and murder. I concur also as to the reward proposed to be obtained for the burkundaz Thakoordoss Misser."

A sentence proposed as above was accordingly issued by the Court, on the 21st September 1849, to the sessions judge of Midnapore, for execution. This, however, was subsequently suspended, on an application, dated 8th October following, for a review of judgment presented by Messrs. Molloy, Mackintosh, and Poc, solicitors, on behalf of the prisoners, in the following terms:

"Under the extreme urgency of the circumstances, we think ourselves justified in addressing you in this irregular form. Under instructions from the mooktear on record of the prisoners in this case, we as their solicitors retained Mr. Ritchie, an advocate of the Supreme Court, to argue against the legality of the sentence of the zillah judge of Midnapore. The case was accordingly argued by him before Mr. Dick, as judge, on Wednesday, the 12th September last. At the close of the argument, Mr. Dick gave Mr. Ritchie to understand that, in the event of his thinking it right to refer the case to a second judge, the prisoner's counsel would be apprised thereof, which reference would necessarily give the prisoners the benefit of a rehearing of the whole case before such second judge. The mooktear was informed, on the 14th or 15th, that the case had been referred to a second judge, but to what judge the mooktear had no means of ascertaining. The prisoners, being represented both by mooktear and vakeel, as well as counsel, concluded (as they were entitled to do) that no order would be passed without notice being given

to them and an opportunity afforded to avail themselves of the right, which, under these circumstances, the law allowed them to be heard by counsel in open court.

"We have just learned that the second judge has decided the case without having allowed the prisoners the opportunity of being so heard before him by counsel, and that the warrant was issued for the execution of Sonatun Naik nine days ago.

"We would most humbly submit under these circumstances that it is for the interests of justice, and would therefore earnestly pray, that the execution of the sentence be respited, and opportunity be afforded counsel to be heard in support of an application for annulling the sentence."

X The above application having been acceded to, after reference to the Court at large as required by Construction No. 819, the case was again heard by Messrs. Dick and Colvin together, on the 9th November, upon which occasion they recorded the following minutes.

MR. A. DICK.—"So far as I was concerned, the case was closed; for I had heard the pleader employed, on the point of evidence, and counsel, Mr. Ritchie, on points of law.

"I sat, however, again with Mr. Colvin, at his request, and again heard both points of law and of evidence urged by the Advocate General, Mr. Jackson, as counsel for the prisoners.

"On the points of law, the only new arguments urged were, 1st, that the Nizamut Adawlut had exceeded their power in issuing Circular Order No. 111, April 2nd, 1812, which I consider completely refuted by a reference to Section 49, Regulation IX. 1793, and Section 3, Regulation X. 1796; 2nd, that that Circular Order had not been observed, inasmuch as the judge who postponed the trial had not recorded his opinion on the evidence, as required. It is true, the opinion of the said judge is not to be found on the file of the record of the case. Such opinion was, however, fully recorded in the statement of the case, as regarded three prisoners acquitted at the time of postponement, a copy of which was in due course forwarded to the Nizamut. It was therefore recorded at the time, and left in the court of the judge, for his information. The law officer was one and the same from first to last.

"On the point of evidence, I heard nothing sufficient to shake the decided opinion I had given of it in my judgment."

MR. J. R. COLVIN.—"It may be proper to place on record my view of the point of law which has been argued in this case.

"The trial was commenced by one sessions judge, and all the evidence was recorded before him, except as to an *alibi* pleaded

1849.

September 21.

Case of PREETUM SINGH and others.

1849.

September 21.

Case of PEE-
TUM SINGH
and others.

by one prisoner. The judge considering that this *alibi*, if established, might shake the credibility of the direct evidence against a number of the other prisoners, postponed the trial as respected all those prisoners. Three other prisoners, against whom other evidence was brought, he acquitted, in concurrence with the opinion of his law officer. He placed on record, on the proceedings of the trial, his reasons for postponement as regarded the first body of prisoners, and he recorded in the judge's office a full statement of his view of the evidence already taken respecting them, for the information (as he was himself about to leave the station) of the judge who would have to take up the postponed case. The judge succeeding him took the fresh evidence that had been called for, in open court, in the presence of the prisoners; and then having read, though it is not distinctly shewn that it was in open court, the whole record of the evidence which had been previously taken by his predecessor, and with that officer's recorded remarks before him, he submitted the case, with his own opinion, which he prefaced by a complete transcript of those remarks, to the Nizamut Adawlut.

"It has been contended, first, that this mode of proceeding, which was adopted under the Circular Order of this Court No. 111,* of April 2nd 1812, is not warranted by law; and, next, that there has not been a sufficient compliance with the directions even of the Circular Order, as the remarks of the postponing judge were not placed *upon the record of the trial itself*, so that they might be accessible to the prisoners or to their legal advisers.

"I do not doubt that the Circular Order in question is founded upon a perfectly just construction of Section 49, Regulation IX. 1793. That section appears to me to be especially directed to the case of a postponement of a trial for the evidence of some particular witnesses, after the commencement of a trial by one judge, and with a view to its completion before another. The contemplation of the law, in speaking of a postponement 'until the next circuit,' was evidently of postponement for completion of the trial before another judge. For Section 42 of the same law had provided that the same judges should never 'make two circuits successively to the same stations.' Then, that a postponement, *after commencement* of a trial, was intended to be provided for, is to me certain from the wording of Section 49. It says, that the judges and *their law officers*, if they should think a postponement for any particular witness, or witnesses, unnecessary, 'shall *complete* the trial without the

* It is to be remarked that the view of the law on which this Circular was founded, is also upheld in two Constructions of the Court, Nos. 81 and 828.

evidence of such witness or witnesses.' Independently of the obvious implication from the use of the words '*complete* the trial,' it need scarcely be said that the law officers could know nothing of a case till after a trial had commenced. And, in very many cases, neither judges nor law officers could be enabled to say whether the evidence of a particular witness is necessary or not, till after having had before them personally many of the other witnesses in the case.

"Being satisfied, upon these grounds, that the postponement of a trial by one judge, in order that only some remaining evidence may be taken before another judge, is perfectly legal, I think that the Circular Order of April 2nd, 1812, is of full force under Section 3, Regulation X. 1796, which declares the Nizamut Adawlut to be 'empowered to prescribe the forms and conduct to be observed by the courts of circuit, in all cases provided for by the regulations, agreeably to their construction thereof.'

"As to the second point of the objections, viz. that the remarks of the postponing judge were not placed upon the record of the trial, I am of opinion that nothing more was required by the Circular Order, than that such remarks should be prepared as an official record for the information of the succeeding judge. Remarks of this kind, even in a letter of reference from the judge to this Court, forwarding a trial for orders, would not have been placed on the record of the trial, or treated as to be of course accessible to parties. I am clear that the mode of recording the remarks cannot be held to vitiate this trial, though I should concur in declaring it the preferable course that such a paper should be placed with the other documents of a trial. In the particular instance, the prisoners cannot have been affected by the mode adopted, as counsel before this Court have had full access both to the remarks and to the letter of reference of the judge who completed the trial.

"I confine this note to a consideration of the existing law as it regards the trial before the Court."

In conformity with the above opinions the sentence passed upon the prisoners on the 20th September, was directed to, be carried into effect.

NOTE.—A petition for mercy presented on the part of the prisoners to His Honor the Deputy Governor of Bengal, was rejected on the 17th November. His Honor observed "that he was unable to see in the case any ground for interfering, in favor of any of the prisoners, with the execution of the sentence passed upon them in due course of law."

1849.

September 21.

Case of PEE-
TUM SINGH
and others.

HURRISCHUNDER BOSE

RAKUMDEE SHEIKH, SHOOJAI SHEIKH, ALUM
SHEIKH, AND BAKER SHEIKH.

CHARGE—DACOITY.

1849.

September 29.

Confessions
taken before a
magistrate
who did not
give his undi-
vided attention
to them when
recorded, can-
not be received
as legal evi-
dence.

THE additional sessions judge of zillah Nuddea thus reported this case, in his abstract of convictions for May 1849.

"A dacoity took place on the 22nd November last, in the village of Daokee, in the thanna of Hardec, and it was said that one or more of the dacoits had been wounded; and on the 9th December, a man called Bawool was apprehended in consequence of wounds on his body. He is said to have made a confession of his crime, but it was not committed to writing, and he afterwards denied all guilt. Owing to his confession, other prisoners were apprehended and confessed their guilt, both before the police and before the officiating magistrate, and some plundered property is said to have been received from them; but there are circumstances connected with the search of the house and premises of each, which would make me doubt the guilt of the prisoners, if the case rested only on finding the property in their possession. I find them guilty, on their confessions before the magistrate, for I believe they made them, and they are clear confessions of having accompanied the gang of dacoits; but the officiating magistrate did not give his undivided attention to the confessions when they were being written, as he should have done, and he has been directed to do in future; and in consequence of his having been engaged with other matters, the witnesses to the confession gave less attention to what was going on than they otherwise might have done."

On appeal to the Nizamut Adawlut, the case was laid before Mr. J. R. Colvin, who directed the release of the prisoners for the following reasons:

"I cannot receive confessions taken by a magistrate in the insufficient and hazardous manner described by the additional sessions judge in his report of this trial, and stated also in the depositions of the attesting witnesses, as legal evidence upon which a conviction can be founded. I therefore acquit the prisoners."

JOORA GHAZEE

versus

MUNEEROODDEEN, SHEIKH FATUK, NEAMUTOOL-
LA, SHODYE, SHEIKH SETABOODDEEN, ARMA-
NOOLLA, SHEIKH ZUMEER, AND MATBUROOLLA.

CHARGE—RIVER DACOITY.

THESE prisoners were tried at the sessions held in zillah Backergunge, for May 1849, charged with river dacoity in the boat of prosecutor at night, attended with maltreating—2ndly, wilfully and knowingly receiving and keeping property obtained by dacoity on the 11th February 1849.

The conviction recorded against them was: Muncerooddeen, privy to river dacoity and knowingly receiving and keeping property obtained by dacoity; and Sheikh Fatuk, Neamutoolla, Shodye, Sheikh Setabooddeen, Armanoolla, Sheikh Zumeer, and Matbueroollah, being accomplices in the river dacoity, and knowingly receiving and keeping property obtained by dacoity.

The case was thus detailed by the sessions judge, in his remarks entered in his statement of convictions:

“The prosecutor deposed that on Sunday, the 1st Phalgun, he was directed by the gomashtha of Kashcenath Dutt zemindar, to take some of the rents they had been collecting to their master, at his residence at Amurajooree; that accordingly about 2 puhurs of the night he received 212 rupees, including some 8 anna pieces, and 3 annas in copper for the road expenses, all packed in a bag, and witnesses Nos. 1 and 2 accompanied him in a small boat, he being in the back and witnesses 1 and 2 in the front part; on leaving the Bhugurutpoor creek, and after entering the Ponurdun river, they were attacked about 3 or 4 A. M. by eight or nine persons in two boats, who knocked the witnesses 1 and 2 into the water, struck him (prosecutor) on the back, and carried off the money and his clothes, and a cloth containing two rupees belonging to witness No. 1; on the return of witnesses 1 and 2 to the boat, some acquaintances of theirs, witnesses 18 and 20, passed by, to whom he communicated what had occurred, and they all went on together till they met the darogah of thanna Tagra, who despatched some burkundazes in pursuit, but they only succeeded in capturing the two boats. It appeared that the first darogah being unsuccessful in his enquiries, another darogah was ordered by the magistrate to conduct the investigation, and he having heard of the prisoner Muncerooddeen being absent from his village Meerakhalee, whence the money was despatched, his suspicions were excited, which led to his apprehension and that of the other prisoners. The prosecutor was

1849.

September 20.

The possession of articles of property known to have been obtained by theft or robbery, is distinguished from the *knowing receipt* of stolen property, by the Circular Order No. 215, of January 25th 1819, and is, therefore, not within the exceptions of Clause 1, Sec. 2, Regulation 11, 1831.

1849.

September 29.

Case of MUNEEROODDEEN and others.

acquainted with prisoners Muneerooddeen and Sheikh Fatuk, the former being a ryut of Kasheenath zemindar, and recognised his own property consisting of two chuddurs and two dhootees, and property, a dhootee, belonging to witness No. 1.

"The prisoners denied the charges in this court. In the mofussil and before the magistrate, Muneerooddeen acknowledged his privity to the dacoity before and after its occurrence, and his receiving 20 rupees; the intended despatch of the money was known; and from the tenor of his confessions the dacoity appears to have been planned with a view to retaliate on the zemindar, for the exactions the prisoners were subjected to as regards their rent. The other prisoners, both in the mofussil and before the magistrate, acknowledged their having been accomplices in the dacoity, and each receiving a portion of the money plundered. Neamutoolla, in addition, acknowledged receiving a chuddur which he gave to Matburoolla, and purchasing a bullock for 5 rupees from witness 26, and giving 6 rupees rent to witness 29, and 4 rupees rent to witness 28, and receiving in pledge, from witness 27, one beegah of land for 2 rupees. Shodye also acknowledged receiving a dhootee. Sheikh Setabooddeen also acknowledged buying a bullock for 6 rupees, and some paddy for the same sum from witness 36, and a bullock for 7 rupees from witness 33. Armanoolla also received a chuddur, and acknowledged paying 3 rupees to witness 29 in liquidation of his debt, and buying one bullock for 6 rupees and another for 2 rupees from witness 32. Witnesses 1 and 2 corroborated the prosecutor's statement in every particular, and mentioned Muneerooddeen's absconding from his village the day after the dacoity occurred: they knew him and Sheikh Fatuk. Witnesses 18, 19, and 20 were the parties who passed by soon after the attack had taken place, and heard the particulars from the prosecutor and witnesses 1 and 2. Witness 21 was passing in his boat on the night in question, about six ghurrees before daylight, not far from the spot where the attack was made, and heard persons calling out as if for assistance. Witnesses 23, 24, and 25 deposed to the fact of the money being given to the prosecutor, as stated, for the purpose of being conveyed to the residence of Kasheenath Dutt. Witness 24 was the mohurir of the tuhseel cutcherry at Meerakhalee, and these witnesses mentioned Muneerooddeen going to his father's village a few days after the dacoity; that his father had a neem-howlah in Kasheenath's zemindaree. Witness 26 deposed to his selling a bullock to Neamutoolla, the latter end of Phagoon, for 4 rupees 12 annas. Witness 27 deposed to his having pledged one beegah of land to Neamutoolla, in Phagoon, for 2 rupees. Witness 28 deposed to Neamutoolla's paying 4 rupees on account of rent. Witness 29 deposed to the same prisoner

paying him 6 rupees in Phalagoon as rent. Witness 32 deposed to his selling two bullocks to Armanoolla, for 4 rupees, in Phalagoon. Witness 33 also sold a bullock to Sheikh Setabooddeen, for 6 rupees 12 annas. Witnesses 34 and 35 corroborated the fact of Neamutoolla paying 4 rupees to witness 28. Witness 36 deposed to his selling 6 rupees' worth of paddy to Sheikh Setabooddeen. The owners of the two boats deposed to the fact of their having been taken away on the night in question. Witnesses 4 and 5 deposed to the production by Muneerooddeen of 20 rupees from his brother-in-law's house, to the production by Sheikh Fatuk, from his own house, of a water jug containing 46 rupees and a piece of "markeṇ" cloth—by Neamutoolla of 7 rupees from his house—by Shodye of 25 rupees and a chudder and dhotee—by Setabooddeen of a plain dhotee—by Armanoolla of 4 rupees—by Matburoolla of a chuddur, a nansook cloth, and an 8 anna and 4 anna piece and 1 pice, all which was plundered property. These witnesses also deposed to the production by Armanoolla of a bullock, and of two bullocks by Armanoolla and Setabooddeen each, which they said were purchased with the money received in the dacoity. Witnesses 1 and 16 recognised the property consisting of a chudder, dhotee, and ruzzyc, as belonging to the prosecutor, and witness 16 recognised also property a dhotee, as the property of witness No. 1.

"Muneerooddeen cited witnesses to prove his good character, and that his zemindar Kasheenath's servants had illwill against him; and he referred to three cases of dacoity, highway robbery, and a summary suit, in which he had been unjustly accused. The other prisoners cited witnesses in support of their character and to prove that they were illtreated by the darogah.

"Shodye also cited evidence to prove *an alibi*, and all gave petitions except Shodye and Matburoolla. Nothing was elicited from the witnesses for the defence calculated to impugn the evidence for the prosecution. Witnesses 41 and 43, in behalf of Sheikh Fatuk and Sheikh Zumeer, gave them a good character and heard they had been illtreated by the darogah. The trial was postponed for the purpose of looking at the cases referred to by Muneerooddeen, but none were to be found in the magistrate's or collector's office, and no clue could be given by the prisoner as to the date of their institution.

"The jury considered the charges proved on violent presumption. After a careful perusal of the evidence, there was nothing to shew that the prisoners had been apprehended from any ill feeling, for the prosecutor never suspected them; and with reference to the confessions of the prisoners in which they all implicated the others, there were no grounds for doubting their validity. I consider Muneerooddeen guilty, on violent presumption, of privy to the dacoity before and after its occurrence, and

1840.

September 29.

Case of MUNEEROODDEEN and others.

1849.

September 29.

Case of MU-
NERROOD-
DEEN and
others.

wilfully and knowingly receiving property obtained by dacoity, and have sentenced him under all the circumstances to five years' imprisonment with labor and irons, and Sheikh Fatuk, Neamut-oolla, Shodye, Sheikh Setabooddeen, Armanoolla, Sheikh Zumeer, and Matburoolla guilty of being accomplices in the dacoity, and wilfully and knowingly receiving property obtained by dacoity, and sentenced them each to seven years' imprisonment with labor and irons."

On appeal to the Nizamut Adawlut, the case was laid before Mr. J. R. Colvin, who passed the following sentence :

"This is a case in which the main evidence against all the prisoners is furnished by their own confessions, and in which there are strong grounds for believing that these confessions were from the first unduly obtained by the police. There is some direct evidence for the prisoners to that effect. And it is remarkable that *all the prisoners* are described to have given full and voluntary confessions ; that those confessions were taken before the darogah on four different days, yet the *same three* persons were the attesting witnesses to all the confessions on all of those days ; and that the confessions profess to have been obtained *after a second darogah had been deputed* to conduct the investigation, on the failure of the darogah who had charge of the thanna (the Tagrah thanna.)

"I consider the confessions given, after the first receipt of the statements of the prisoners under circumstances of such suspicion, not to be evidence upon which a judicial conviction of the parties can be properly founded.

"I convict three of the prisoners, Shodye Sheikh, Setabooddeen, and Matburoolla, of having in their possession articles of property known to have been obtained by theft or robbery, (an offence distinguished from the knowing receipt of stolen property by the Circular Order No. 215 of January 25th, 1819, and therefore not within the exceptions of Clause 1, Section 3, Regulation II. 1834,) and sentence them to imprisonment for two years, with a fine of 100 rupees each, commutable to labor, if not paid within a month, until payment, or till the expiration of the sentence, and acquit the other prisoners."

GOVERNMENT

versus

- (1) HURDEB GHOSE, (2) GORACHAND DOSS, (3) DYAL CHAND BOSE, (4) GUNGADHUR GHOSE, (5) ESSUR GHOSE, (6) BYKUNTHNATH MITTER, (7) DOORGRAM GHOSE, (8) NIM CHAND JOOGEE, (9) NOBIN LUSHKER, (10) MOTEEEOOLLAH SHIAFOOYE, (11) HYDER SHEIKH, (12) DUFFAY SHIAFOOYE, (13) DUFFAY SHEIKH, (14) CHAND DUFFTREE, (15) MOONSHIE SHEIKH, (16) EUSUFF JEMADAR, (17) SHEKHUM SHEIKH, (18) JUTTO MOLLAI, (19) JUTTOO SHEIKH, (20) WARIS SHEIKH, (21) NAKHOODIA SHIAFOOYE, (22) KHYROO SHIAFOOYE, (23) EALACH SHEIKH, (24) KHAN MAHOMED, (25) PEER MAHOMED, (26) MOOKEEM SHIAFOOYE, AND (27) SALIM SHEIKH.

CHARGE—AFFRAY WITH HOMICIDE AND WOUNDING.

THE prisoners were charged, in the 1st count, with affray with homicide and wounding; in the 2nd count, with counselling, aiding, and abetting the crime aforesaid; and, in the 3rd count, with privy to the crimes aforesaid; both before and after its perpetration. The additional sessions judge of the 24-Pergunnahs, who tried the prisoners at the sessions held for that district in August 1819, thus reported the circumstances of the case in his letter of reference to the Nizamut Adawlut:

‘The prisoners, from No. 10 to No. 26 and Salim Sheikh, all live in Nelumberpore, or the neighbouring hamlets, which is a part of a Government mehal, which has been let to Sumbhoo Haldar, whose naib is Hurdeb Ghose. The naib’s cutcherry is at Seracole, and is 4 or 5 miles from Nelumberpore; but there is also a temporary cutcherry in that village in the house of a ryot, which an ameen, prisoner No. 9, had occupied for 10 or 12 days while he was engaged in revising the accounts of the gomashita and the ryots. There appears to have been much difficulty in settling with them, and the ameen is said to have left the village in disgust, and he was seen before the ryot took place with a band of men at Paturbarea, which is about two coss distant, and where a burkundaz was stationed, who had been directed to report without delay any collection of persons in the neighbourhood. It is the site of the cutcherry of a connection of the real ijaradar, whose nominee is Sumbhoo Haldar. The band of men, among whom were prisoners from No. 2 to No. 9, proceeded before it was light to Nelumberpore, and there, I believe, they plundered the house of Moteeoollah, who appears to be an influential man in the village, and who has taken a conspicuous part in conducting the defence of his party. Moteeoollah appears to have

1819.

September 29.

Case of affray with homicide and wounding. A heavier measure of punishment awarded those belonging to the party whose oppressive conduct originated the affray.

1849.

September 20.

Case of HUR-
DEB GHOSE
and others.

very quickly assembled his neighbours to oppose the people of the ijaradar, and he appears, by the evidence, to have driven some of them from the village, and to have followed them a short distance, and to have attacked them near Adumtollah, a short distance from his own house, (as far distant as a man's voice can be heard.) Two men were killed in the fight which took place, and two others were wounded, of whom one has since died of his wounds, the other is the prisoner No. 7. All the casualties were on the side of the ijaradar, and, besides the killed and wounded, prisoners Nos. 3, 4, 5, and 8, were taken prisoners by the villagers, and found in Motecoollah's house by the police. The villagers do not appear to have refused to attend to settle their accounts, but rather not to have agreed to the accounts of the ameen, and the ijaradar had no excuse for using any kind of force towards them. It appears by a record obtained from the magistrate's office that, on the 21st March last, Hurdeb Ghose was directed to give a mochulka that neither he, nor any one on his part, would break the peace for three months. Whether he was with the gang or not, I have no doubt but that he, as naib of the zemindar, sanctioned the attack on the house of Motecoollah: he acknowledged that he sent 12 or 13 men to help the ameen: and if they were all equal in strength to those who were prisoners in this case, it was a powerful force. A complaint was made at the thanna on the 16th May that the gomashtha had ill used the prisoner No. 26: this is shewn by a report which appears to have been made on the 18th May, and to have been signed by the magistrate on the 21st May. A complaint appears also to have been made to the police on the 30th May, by the inhabitants of the village of Daugharree; that there was a number of lateals collected by the ijaradar. These documents are not proved by witnesses, but, as far as they are favorable to the villagers, they should be allowed to be good, as they are among the records of the court of the committing officer. The band of men belonging to the ijaradar are said to have attacked the house of Motecoollah before it was light, and to have plundered it; and if the villagers had killed the assailants on the spot, under such circumstances, I think that they would have deserved praise rather than blame for opposing them; and if property was carried off, (which fact is stated, and there is no evidence to throw doubt on it,) they would have been justified in at once following the plunderers, and, although some of those men had been killed while opposing the re-capture of the plundered property, the villagers would not have been punished for attacking a body of men still banded together, who had committed what was in fact a dacoity in their village before sun-rise, and the greater number of whom were unknown to them by name as well as to most of the witnesses in this case. I see no reason to think that the villagers had made any preparations for a fight, before the house of Motecoollah was attacked and

plundered : but I think that some hours elapsed between the time when Moteeoollah's house was attacked and the time when the fight took place, in which the two men were killed, and the two others were wounded, of whom one afterwards died of his wounds ; and it is to be considered whether they were justified in taking the law into their own hands after so great delay, and after they were aware that their opponents were persons acting under the directions of the zemindar's servants. There would have been time to have sent information to the darogah, although, probably, there would not have been time for him to have arrived on the spot : but no attempt was made to get the police to help them ; they acted on their own responsibility, and opposed their force to the diminished force of the opposite party, and caused the death of three men. Respecting the men who were captured by the villagers and kept in Moteeoollah's house, I think it highly probable that they, or some of them, were secured between the time when the house was plundered and the time when the men were killed. I think it also highly probable that a very large number of men were brought to plunder the house, but that they were dismissed, and the servants of the ijaradar were alone kept in the village, and that they were afterwards attacked by the villagers ; but these circumstances cannot be proved by direct evidence, owing to the strong party feeling which prevails."

The additional sessions judge then detailed the evidence at length against each prisoner, and stated the punishment which he considered should be awarded. In conclusion, he observed : "I beg leave to say that I should have sentenced many of the villagers in this case to seven years' imprisonment, with labor, but that in a former case which I tried, of similar importance, I was blamed for doing so, and was told that I should have shewn better judgment had I submitted it to the higher court ; and I have consequently proposed a more severe punishment, with the full confidence that the superior court will give the case of each of them every consideration which it may deserve."

BY THE COURT.

MR. J. DUNBAR.—"The additional sessions judge has, in his report of the 31st ultimo, very well and clearly stated the circumstances of the case. The only point upon which I do not go along with him, is in regard to the time which elapsed between the attack upon Moteeoollah's house and the defeat and dispersion of the lateals by the villagers. The former, under the guidance of Bykunthuath Mitter, ameen, and Nobin Lushker, gomashta, having effected their object in the plunder of Moteeoollah's house, would appear no longer to have kept together in one body ; some probably went off with their leaders towards the cutcherry, and others in other directions. One body of not less than 10 or 12 men (there may have been many more,) having

1849.

September 29.

Case of HUR-
DER GHOSH
and others.

1849.

September 29.

Case of HUA-
DEN GHOSE
and others.

with them a considerable quantity of plundered property, took the direction of Adumtollah, near which they were overtaken by the villagers, attacked, and dispersed,—some of them left on the ground severely wounded, and several taken captive and carried back to Motecoollah's house. The scene of the conflict is, according to the evidence, so short a distance from Nelumberpore that I think it probable that the chase, the dispersion, and the capture, must have taken place at the most within an hour after the plunder of Motecoollah's house.

“There can be no question that the whole affair is attributable to the oppression of the toomur ameen and the gomashita. Motecoollah would appear to have done his utmost to protect the ryots; and the ameen and gomashita probably calculated on effectually silencing him and putting an end to his interference, by giving up his house and homestead to be plundered by a band of hired ruffians. The measure was carried into effect. Instead of submitting quietly, however, Motecoollah quickly assembled his friends, followed one party of the plunderers, attacked and defeated them, and brought back the property they were carrying off. Had the ryots done nothing more, they would certainly have deserved commendation; but unfortunately they wanted discretion, they gave free vent to their angry passions, and homicide and wounding were the consequences.

“Having very carefully examined the evidence and deliberately considered all the circumstances of the case, I proceed to dispose of the prisoners arraigned before the additional sessions judge. It will be seen that I consider the ijaradar's party much the most guilty: they were the aggressors, and it is but just that they should be punished more severely than the ryots who were roused to vengeance by oppression.

“No. 1, Hurdeb Ghose Naib.—Had the books of the Seracole cutcherry been immediately sent for, they would most probably have furnished some evidence as to the truth or otherwise of the defence set up by the prisoner. It is too late for this now. I fully participate in the doubts of the additional sessions judge, as to the prisoner's having been present during the affray; he is therefore entitled to acquittal on the 1st count; nor can I find in the proceedings sufficient and satisfactory evidence of his having counselled the attack on Motecoollah's house, and having thereby rendered himself responsible for the consequences. There is nothing to shew that he took any close and personal interest in the previous disputes with the ryots. The ameen and the gomashita were the parties with whom they had to do; and I attach little weight to the evidence of the witnesses who depose to having seen the prisoner at Paturbarea preparing the lateals the day before, contradicted as their evidence is, not only by that for the defence but by that of some of the witnesses for the prosecution, and, as I think, by the general circumstances of the

case. It certainly may be presumed that he must have known of the intended attack ; but mere presumption to this extent is not sufficient to warrant conviction. I therefore acquit him and direct his release.

“ No. 6, Bykuntlnath Mitter.—I concur in the conviction. I consider the first charge to include the whole affair, from the first attack upon the house of Moteeoollah to the conclusion of the business by the defeat and dispersion of the ijaradar's party near Adumtollah. The evidence is strong as to the prisoner's having personally superintended the attack on the house, and having directed the plunderers to carry off the property. When his purpose had been executed, it is probable that he considered the affair ended and retired to the cutcherry, so that he may not have been on the ground at the very time when his followers were discomfited ; but this can avail him nothing. I attribute the affray and all its sad consequences mainly to the oppressive measures of this man. I therefore readily concur in the sentence of fourteen years' imprisonment, with labor in irons, proposed by the additional sessions judge, and sentence him accordingly.

“ No. 2, Gorachand Doss, 3, Dyalchand Bose, 4, Gungadhur Ghose, 5, Essur Ghose, 7, Doorgaram Ghose, 8, Nimchand Joo-gee, and 9, Nobin Lushker.—These men all belong to the party opposed to the ryots. I concur in the conviction, and sentence them, as proposed by the additional sessions judge, each to ten years' imprisonment, with labor in irons.

“ No. 11, Hyder Sheikh, and 12, Salim Sheikh, (second calendar.)—According to the evidence, these men headed the ryots, and did in fact strike down and kill the men who lost their lives in the affray. The witnesses, however, were at such a distance that the correctness of this statement may well be doubted. I receive it to the extent of admitting that they were the most forward and the most active among the prisoners, and that they displayed more violence and less regard for the lives of their adversaries than the others. I think the sentence proposed by the additional sessions judge somewhat too severe, and reduce it to imprisonment, with labor in irons, for ten years.

“ No. 13, Duffay Sheikh, 14, Chand Duftree, 15, Mognshee Sheikh, 16, Eusuff Jemadar, 18, Jutto Mollah, 20, Warris Shēikh, 22, Khyroo Shafaooye, 23, Ealach Sheikh, 24, Khan Mahomed, 25, Peer Mahomed, and 26, Mookeem Shafaooye.—I concur in the conviction of these men, who all fought on Moteeoollah's side ; but deeming the sentence proposed by the additional sessions judge too severe, I reduce it to five years' imprisonment each, with labor in irons.

“ No. 10, Moteeoollah Shafaooye.—There can be no doubt that the prisoner was chiefly active in collecting the villagers, and encouraging them to attack the other party ; but this can be no matter of wonder, seeing that his house had been attacked and his pro-

1849.

September 29.

Case of HUR-
DEB GHOSE
and others.

1849.

September 29.

Case of HUR-
DEB GHOSE
and others.

perty forcibly carried off. It seems probable that he himself never contemplated so tragical an end to the business. His object was doubtless to recover the property, and, if possible, to secure some of the plunderers. Great allowances must be made for the circumstances in which he was placed, and the provocation he had received. Concurring in the conviction, I sentence him to be imprisoned with labor for four years, the labor commutable to a fine of 50 rupees, payable in 30 days.

"No. 12, Duffay Shafooye, and No. 21, Nakhoodha Shafooye.—These men are sons of Moteeoollah, and, for sons so situated, considerable allowance must be made. They must naturally have participated in their father's feelings of indignation at the attack and plunder of their home. I concur in the conviction, and award the same sentence as in the case of their father, viz. four years' imprisonment, with labor,—the labor commutable to a 50 rupees' fine, payable within 30 days.

"No. 17, Shekhum Sheikh.—This man does not deny that he was present when the lateals attacked his uncle's house; he says that he immediately fled in terror to the house of a friend about a mile distant. He adheres to this statement from first to last, and it is borne out by the witnesses cited in defence. On the whole I am inclined to receive his statement as true, and to think that the three witnesses for the prosecution who named him may have done so from the circumstance of his being nephew to Moteeoollah and living in his house. He is entitled to the benefit of the doubt, and I acquit him.

"No. 19, Jutto Sheikh.—I do not think the worse of this man's case because the witnesses cited on his behalf have not come forward, to substantiate a plea which has so evidently been falsely urged by most of the prisoners. Recognition by only two witnesses for the prosecution gives room to doubt; and of that doubt I give him the advantage, and acquit him.

"A few observations I must add in regard to the proceedings on the trial before the additional sessions judge. They seem to me to have been rendered considerably more voluminous than was necessary by the manner in which the law officer cross-questioned the witnesses, upon points of evidence of no real interest to the case: Some of his questions (see the depositions of *Lukheenarain*, *Brijjo Hurree Kapat*, *Durap Mullik*, *Bukhtowur*, and *Kalloo Sheikh* in particular) were indeed almost entirely irrelevant, while others were obviously such as could only elicit a repetition of what had been already deposed to by the same witnesses. I wish to direct the attention of the additional sessions judge to this matter. The law officer, sitting on the trial, is of course at liberty to put or suggest any questions calculated to bring to light the real circumstances of the case, to enable him to give a clear and conscientious verdict; but he should use the privilege with discretion, and, when he does not, the judge should interfere and keep

him within reasonable bounds. Some of the prisoners, I observe, were allowed to question witnesses for the defence of other prisoners, not cited by themselves. This increases the bulk of the record to no purpose. Witnesses for the defence should be examined only on behalf of those prisoners by whom they have been named after commitment."

1849.

September 29.

Case of HUR-
DEB GHOSH
and others.

GOVERNMENT

versus

RAMSOONDER GOPE.

CHARGE—WOUNDING AND THROWING MUSST. BEEBHUYAH
• BEWAH INTO THE RIVER, WITH INTENT TO KILL HER.

THIS case was tried at the jail delivery of zillah Mymensingh, in September 1849, by the sessions judge of that district, who thus reported the circumstances attending it:

"Musst Beebhoyah, a young widow, was induced by the prisoner, who is a connection of her late husband, to leave her village and come to his, and do the work of his house. A short time afterwards, she became pregnant by him, on which, she states, he said, 'what will you do now? whose name will you take? or charge with it?' to which she replied, 'his.' The prisoner then proposed they should leave the country, and, late one night in Assar, took her to the Jeine river, which is about 100 yards from his house, having told her he had taken all his things to a boat—for it must be observed that, although she did the work of the house, she had only slept two nights at his house, and her usual practice was to sleep at the house of Gobind Gope, from which she was called on the night in question, and she would on that account not be aware of, the falsehood he had told her about his things.

"The prisoner took with him a dao and a bamboo luggee, and, on reaching the banks of the river, struck her with one or both of them, and threw her into the river, from which she was rescued by a burkundaz, who happened to be in a boat about 100 yards higher up the stream, and, on hearing violent screams, quickly loosed the boat, and rowed down and rescued her as she floated down the river, and she then made the same statement to him and others in the boat.

"The prisoner was apprehended immediately, and his person and hair found to be dry. When apprehended at the thanna, and before the magistrate, he said Musst. Beebhoyah was pregnant by him, and on account of the shame they agreed to kill them-

1849.

October 11.

A foudjaree confession cannot be received in evidence when made only before the assistant to the magistrate. The Circular Order, No. 54, of July 16th 1830, para. 20, requires a confession to be taken "on a personal examination by the magistrate himself."

1849.

October 11.

Case of RAM-
SOONDER
GOPE.

selves, and both went into the water ; but she, being frightened, called out, on which he gave her a push, and then left the water and went home, when he was taken up by the *burkundaz*. In both confessions he admitted taking his dao with him, which was found near the spot where Musst. Beebhoyah had been thrown into the river, and before the magistrate that he took it to cut his own throat, in case he failed to drown himself. In the *thanna* confession, he said he thrust her out with the bamboo by a push with it on the right shoulder, and on that place she had received a wound, which she appears to think was done with the bamboo ; but the evidence of the civil surgeon shews it must have been inflicted with a sharp cutting instrument, and might have been caused by the dao before the court.

“ Before this court the prisoner stated, in his defence, that he neither beat nor threw her into the river, but that both went voluntarily into the water, and she making a noise and a boat coming, he left her in the water and went away. When the confessions were read over to him, he admitted the correctness of both except in regard to what is recorded in the *thanna* one about his having wounded her.

“ The *lutwa* of the law officer convicts the prisoner of slightly wounding and throwing Musst. Beebhoyah into the river, for the purpose of killing her, in which I concur ; and considering it a determined and premeditated attempt at murder, I would recommend the prisoner to be sentenced to transportation for life.”

BY THE COURT.

MR. J. R. COLVIN.—“ I think, upon the proof afforded by the statements of the woman, Beebhoyah Bewah, immediately on her being rescued from the water, together with the admission of the prisoner, that he went with the woman to the river, (though he has said on the trial that it was with the view of their both drowning themselves,) and with the mark of force upon her person, as well as the finding of the prisoner's dao close to the spot, that there can be no doubt that the prisoner cast Beebhoyah Bewah, being then pregnant by him, into a deep stream for the purpose of killing her ; and upon this conviction, I sentence him, as recommended by the sessions judge, to imprisonment in transportation for life.

“ I have been compelled, in considering the case, to set aside the *foujdaree* confession of the prisoner, as it was made only before an assistant to the magistrate, and not on a ‘ personal examination by the magistrate himself,’ as expressly required by the Circular Order, No. 54, of July 16th, 1830, paragraph 20. This important duty must always be performed by the committing magistrate in person, or the confession cannot be received as legal evidence. The attention of the acting magistrate must be specially called to this point.”

GOVERNMENT

versus

SHEIKH SHIKDAR.

CHARGE—ESCAPING FROM CUSTODY.

THE prisoner was tried at Bancoorah, by the sessions judge of West Burdwan, on the 25th of August 1849, for bursting the rivets of his irons and making his escape when employed on the banks of the Danarbund, he being under sentence of imprisonment with labor in irons.

The sessions judge, in referring the trial, observed :

“ I submit the case for the orders of the Nizamut Adawlut, because it appears to me to be one in which the prisoner should be imprisoned in the jail of Allipore, and I doubt much whether (without reference) I have the power to pass such an order.

“ This prisoner, originally sentenced to ten years' imprisonment at Moorsshedabad, has now four times made his escape from jail, in consequence of which his term of imprisonment has already been extended to fifteen years six months, of which five years, nine months, and twenty-three days remain unexpired.

“ He has now again been convicted of breaking jail whilst at work, and indeed does not deny having done so ; and the *futwa* convicts and makes him liable by *tazeer* ; and as there is the fullest proof of his guilt, and it appears quite hopeless to keep him safely imprisoned here, or in any mofussil jail, I propose, under all the facts of the case, to increase his period of imprisonment four years, two months, and seven days, making it in all ten years from the 25th instant, and sentencing him, in addition, to undergo it in the jail at Allipore.

BY THE COURT.

MR. J. R. COLVIN.—“ This is a case in which the offence of the prisoner is much aggravated by its being the fifth instance in which he has escaped from jail ; but I must quash the commitment and proceedings in the sessions court, as the escape charged was quite unattended with violence. This is the only course legally open under Construction No. 501, and Section 5, Regulation XII. 1818. The prisoner must be remanded to be sentenced by the magistrate according to law.

“ Application may probably be made to Government, after the prisoner has been legally convicted and sentenced, for his removal to another jail, with reference to Act XVIII. 1844, and the power formerly vested in the Nizamut Adawlut by the concluding part of Clause 5, Section 8, Regulation LIII. 1803.”

1849.

October 11.

The offence of escaping from jail, while under a sentence of imprisonment, if committed without violence, is one on which, even although it may have been several times previously committed by the same prisoner, it is not proper that a commitment should be made to the sessions court. It is for the magistrate to pass sentence in such a case, within the limit of his powers, with reference to Construction 501, and Section 5, Regulation XII. 1818.

CHINIBAS PAL

TARACHURN CHUTTAR.

CHARGE—CUTTING AND WOUNDING WITH A SWORD WITH
INTENT TO KILL.

1849.

October 13.

On a conviction of wounding, but without proof of deliberate intention to commit murder, so as to bring this crime within the penalties of Regulation XII. 1829, sentence passed of imprisonment for seven years with labor in irons, the wounding having been with aggravating circumstances.

THE sessions judge of West Burdwan, who tried this case at the sessions held for that district, in September 1849, thus reported it in his letter of reference to the Nizamut Adawlut:

"The details of this case may be given in a few words. The prisoner and his wife, Gyamonee, had for some time been residing in the house of their father-in-law, when, on the night stated in the charge, the former, having conceived that his wife had formed an improper intimacy with Doorgachurn, her aunt's husband, (who was also living in the house,) attacked him with a sword, and gave him a severe cut over the shoulder and two slighter wounds on the arm and hand, and then proceeding where his wife's grandmother was sleeping on a charpoy cut her also over the arm. He then made off; and the next thing heard of him was his appearing before the joint magistrate at Mungulpoor, and telling him that he had caught Doorgachurn in the act of criminal intercourse with his wife and had wounded him.

"Both the prosecutor and the witnesses called in this case (I fancy from the feelings of shame) deny that there was any improper intimacy between Gyamonee and Doorgachurn; and under these circumstances it is hard to say what provocation the prisoner really had for acting as he did. They speak, however, distinctly to the fact of his wounding both the parties, and he himself admits it as regards the man, though he says that he never touched the old woman at all, and does not know how she was hurt.

"On his trial the prisoner says that he had for some time observed that there was too much familiarity between his wife and Doorgachurn, (who is quite a young man), and that he one day found them under such circumstances as made him conceive that they had actually had improper intercourse; that his wife, however, steadily denied this, and there it ended for the time; that on the night of the attack he had been out, and, coming back unexpectedly, found them close together near his bedding, upon which his wife was lying; and though they separated before he came up, he at once took his sword (which was at hand) and then went and cut Doorgachurn over the shoulder, &c., intending to *mark* not to *kill* him, after which he went off, and mentioned what he had done to the joint magistrate.

"The futwa of the law officer convicts the prisoner of wounding both parties, with intent to kill, and holds him liable to tazeer;

and in this finding I agree as regards the wounding, though I do not think that the intent to kill is clearly proved; and this is my reason for referring the case to the court. No doubt he (prisoner) had some provocation for acting as he did, and though he denies wounding the woman at all, it is probable that he did it holding her as a go-between in the case; but in the ignorance or denial of the witnesses, it is impossible to say what the real cause of it was: still, as I consider, under all that has been established, that it will be sufficient for the ends of justice to convict him of the wounding only, for this I recommend that he be imprisoned with labor and irons for five years."

1849.

October 13.

CASE OF TA-
RACHURN
CHUTTAR.

BY THE COURT.

MR. J. R. COLVIN.—"I concur in thinking that there is not in this case such certain proof of a deliberate intention to commit murder as would bring the crime under the penalties of Regulation XII. 1829. Two persons were, however, wounded, one of them suspected by the prisoner to be a paramour of his wife, the other his wife's grandmother,—the latter on the arm in two places, though not severely.

"I consider the sentence proposed by the sessions judge not adequate for the offence, and sentence the prisoner to imprisonment for seven years, with hard labor and irons."

GOVERNMENT

versus

BANOO GHURRAMEE AND SHADOO SHEIKH.

CHARGE—MURDER.

THE prisoners were tried at the sessions held for zillah Rajshahye, in the month of September 1849, charged with the wilful murder of Poorna, wife of Banoo.

The circumstances of the case were thus detailed by the sessions judge, in his letter of reference:

"The prisoner Banoo had two wives, the deceased, and another by name Sakeena. This woman, on being examined, deposed that her husband went out at night to watch his fields, leaving her and her rival in the house; that the latter went out at night, where she could not say—but next day her mother

1849.

October 13.

In the absence of proof of legal justification of a murder of a wife by her husband, such as would have been afforded had there been

evidence to the husband having detected the wife in the act of adultery, held that the Court could not properly pass a less sentence than one of imprisonment in transportation for life. There being, however, strong presumption that the deceased was seized either in the act of adultery, or at least when found secreted with her paramour, it was not thought fit to pass a capital sentence either on the husband, or on his nephew, who aided him in the murder.

1849.

October 13.

Case of BANOO GHUR-
RAMEE and
another.

came and said she had been found hanging to a tree. This witness, on hearing her deposition made before the magistrate, denied that she had made any such statement.

"The next two witnesses, immediate neighbours, deposed that, hearing Sakeena calling out, they went to the house of Banoo, and there found him holding the deceased by the hair, while the other prisoner, Shadoo Sheikh, was pressing her neck with one hand, and had the other over the woman's mouth: seeing this they separated them, and on the prisoner's letting go the woman they found she was dead. Sakeena brought some water, but when given to the deceased she could not drink; that on being questioned by them, Banoo said they had caught her committing adultery with Pooras, and therefore had killed her. Shadoo Sheikh then went and brought a rope, used to fasten up the cows, and placed it round the deceased's neck, and he and Banoo then carried out the body and suspended it to a jack tree. Banoo got up into the tree while Shadoo Sheikh lifted up the body for the former to fasten the rope to the tree.

"Two other neighbours also came and saw the deceased lying dead in the compound or enclosure. There was then no rope round her neck. And one witness, on asking what had happened, was told—'It was no business of his,' or 'he had no business to ask.'

"Another witness, the deceased's brother, deposed to seeing his sister's body hanging to a tree; that she had been long married to Banoo, who did not ill-use her; knew of no intrigue between her and Poorasoollah, but she had eloped before with a person named Areef. This was seven years ago.

"Two witnesses attested the sooruthal: both said the deceased's face was suffused, and that they could not say if there was any foam at the mouth.

"By Mr. sub-assistant surgeon Ellis's deposition, the deceased died from suffocation caused by pressure on the throat, and not from hanging.

"When called upon for their defence, Banoo gave in a petition, a written one. In this he states that, hearing a noise, he ran to his house, and there saw Pooras and Kamal Sheikh beating his wife, whom they carried away, and next day she was found hanging to a tree. Pooras left behind him a cloth, (one was produced in court together with a stick, and the rope by which the deceased was suspended to the tree.)

"The prisoner Shadoo denied all knowledge of the matter, adding he lived some distance off, and was at enmity with some of the witnesses.

"Both prisoners declined examining their witnesses, though they were brought into court, one by one, and the question put to the prisoners if they would examine them.

"The law officer, on being questioned, answered that wilful murder was not proved against either of the prisoners.

"He was then directed to give his futwa.

"In this he states that there is violent presumption that Shadoo Sheikh compressed the deceased's throat, causing her death, and that Banoo aided and abetted in the assault; but as there is suspicion of adultery, *kissas* is not incurred. But as both prisoners deny this, they are liable to *akoobut*, the measure of punishment resting with the *hakim*.

"It will be seen that in this futwa the moulvee has quite travelled out of the record (of this court at least,) adopting, as evidence for the prisoners, statements made by Sakeena (Banoo's wife) in the foudjaree, and flatly denied by her in this court, and also the answer made by Banoo before the magistrate, (which he calls a confession,) and the answer of Poorasoollah in the mofussil, (which he calls an admission.)

"I think it very probable that there was an intrigue between the deceased and this Poorasoollah; and it is not improbable that they were caught in adultery, by Sakeena, the rival wife, who went and informed her husband, who came home with his nephew Shadoo Sheikh, but, on her seeing the sanguinary revenge they were taking, she called out; this brought the witnesses, but not till the deceased was at her last gasp; and finding they were in a mess, and might be implicated, I have no doubt they helped to carry the body to the place where it was suspended to a tree, as Banoo is a very feeble old man, and it is not likely the other prisoner could have carried the body alone.

"All this, however, is supposition, and, in mentioning it, I may have fallen into the same error as the moulvee. But allowing there were extenuating circumstances (although there is nothing on the record to shew it,) and that to Sakeena's retracting her statement may be attributed the break down in the prisoner's defence, and the fact of the cloth found being Poorasoollah's in consequence being not proven, I would, under the futwa, (which I do not approve of,) suggest that Shadoo Sheikh be sentenced to fourteen years' imprisonment, with labor and irons, and Banoo (who is stated in the calendar to be 60, and whose appearance is not less, being besides a feeble old man,) I would suggest be sentenced to seven years' imprisonment with labor and an iron ring,—and this is almost tantamount to imprisonment for life."

BY THE COURT.

MR. J. R. COLVIN.—"The evidence proves to my satisfaction that the deceased, Poorna Ourut, was murdered by the two prisoners; and there is no proof of legal justification, such as that of detection of the woman in the act of adultery, which, had it been adduced, would have exempted the first prisoner, Banoo

1840.

October 13.

CASE OF BANOO GHUR-
RAMEE and
another.

1849.

October 13.

Case of BA-
NOO GHUR-
RAMEE and
another.

Ghurramee, her husband, from punishment. Even such proof, of course, could have been no justification for the active aid given by the second prisoner Shadoo Sheikh, nephew of the first prisoner, in putting the woman to death. There is, however, a strong presumption, from the statements of the witnesses, Margun Sheikh and Burroo Sheikh, of what they heard from the first prisoner at the time that the woman was killed, corroborated by the statement appearing on the record of the inquiries before the mofussil police and the magistrate, that the woman was seized either when found committing adultery, or at least when found secreted with her paramour.

"In the absence of any legal justification, I cannot award against either prisoner so mitigated a punishment as is recommended by the sessions judge. Looking to all the circumstances of the case, and to the relationship between the prisoners, which must have naturally interested the second in any keen wrong done to the first prisoner, I sentence them both to imprisonment in transportation for life, with hard labor and irons—the execution of the sentence as to labor and transportation on the first prisoner, Banoo Ghurramee, being specially subject to the sanction of the medical officer of the jail where he may be confined."

MUSST. JYEMUNNEE

versus

SUMBHOO SINGH.

1849.

CHARGE—AIDING AND ABETTING IN CULPABLE HOMICIDE.

November 22.

A prisoner sentenced to two years' imprisonment and to pay a fine of rupees 20 in lieu of labor, for having permitted a person, for whose arrest he held an order of the civil court, to be beaten and ill-treated by the decreeholder and others, to such an extent that he died in consequence immediately after.

THE prisoner was tried on the above charge at the sessions held for zillah Moorshedabad in October 1849. The particulars of the case, as reported by the sessions judge, in his letter of reference, were as follows :

"The prisoner is a peada attached to the court of the moonsiff of Zeeagunge. He was sent to arrest the deceased, Ramdhun Mahuter, in execution of a decree against him. On the Jeet Ostomee (a Hindoo holiday,) a woman informed the prosecutrix, the mother of the deceased, that as he, the deceased, was passing by the house of Nundo Kubeeraj, Gooroodyal Sircar, his son-in-law, Ramgovind, the abovementioned peon of the moonsiff's court, and seven or eight others, seized him and took him off. The prosecutrix hastened to the door of Kalloo Baboo, where she saw them run away, leaving her son with the peada. On approaching she found her son senseless : she put water in his mouth which he could not drink : his neck was wrapped up with his fota (sheet). The prosecutrix states that once before in Jyte, her son was arrested in execution of the decree, but released by

some respectable inhabitants, when Gooroodyal used a threat saying, 'we shall see some day.' He caused the death of her son by beating. She saw him kick the deceased before he ran away.

1849.

November 22.

Case of SUM-
BHOO SINGH.

"Fukeer Chund Nye states that, on Sunday, in the month of Bhadur, about 5 o'clock p. m., while on his way from the house of one Bungsee Baboo, he observed near the door of Ramper-shad Shaha, the prisoner, who was a peon of the moonsiff's court, Gooroodyal and others, about five or six men, seize and take away the deceased, some beating him with their fists and others kicking him. When they reached the cow-house of Golab Chund Baboo, Bissennath Sircar, brother of Gooroodyal, came out from a lane and ordered them to take away the deceased; upon which one Sreedhur pulled the deceased by wrapping a cloth round his neck. Gooroodyal kicked him on the loins, and one Anund on the abdomen, while Toofanee struck him on the right side with a lattee, which felled the deceased to the ground, and he died immediately. All the people ran away, leaving the prisoner Sumboo alone on the spot, who, according to the witness, struck the deceased a chapper (slap) when he first seized him, and then called out to the others to desist from further beating. He heard from Gooroodyal that he had once before arrested the deceased in Jyte. The witness recognised Ramgovind, the son-in-law of Gooroodyal.

"Bunkbeharree Sircar states that, on Sunday, the 25th of Bhadur last, about 5 o'clock p. m., he was going to buy opium, when he observed Gooroodyal Sircar, Sumbhoo Singh, the prisoner, Ramgovind, Anund Sircar, Toofanee Sheikh, and others, about five or seven men, beat the deceased; Gooroodyal kicked him on the loins, Toofanee struck him on the side with a lattee, and Anund kicked him on the abdomen. He could not exactly say how the others beat him. The beating caused his death. The witness afterwards names Bunkbeharree Sircar, Kasse Sircar, Chidam, Fukeer Chund Napit, and others, who he says were present and witnessed the occurrence. The prisoner Sumbhoo did not beat the deceased: he was present and calling on the others to desist. Ramgovind was also present.

"Rughoonath Sircar confirms the statement of Fukeer Chund, adding the date of occurrence, 25th Bhadur. He further states that the body of the deceased was sent to the magistrate by the darogah, who carried on the usual investigation on the following day. The prisoners were taken up—Toofanee had a lattee in his hand, and Sumbhoo, the prisoner, a stick. The deceased had no particular disease. He was about 25 years old. The witness says that he heard Gooroodyal had taken out the execution of a decree of the moonsiff's court, and two or three times tried to recover the amount of the decree, failing which he caused this commotion. Ramgovind beat the deceased.

1849.

November 22.

CASE OF SUM-
BHOO SINGH.

" Chidam Napit states that, on the 25th of Bhadur last, about evening, he was going to Kapooreea Puttee for some pice ; he saw the deceased come out after play from the house of Seeboo Kubeeraj ; that near the house of Rampershad Shaha, Ramgovind, Gooroodyal, Toofanee, his servant, and one of his gomashas, seized the deceased and took him to the kootee of Rye Singh Pooree, where Gooroodyal Sircar and Sumbhoo were waiting. The former ordered the deceased to be beaten, upon which Ramgovind, his son-in-law, took him, and, wrapping up a cloth about his neck, Gooroodyal and Toofanee kicked and beat the deceased with fists. He then went away, and on his return saw the deceased lying dead opposite the cow-house of Golabchund. His mouth and nose were bleeding. The deceased had no disease. He was 25 years old. He had a dispute with the prisoners regarding the amount of the decree. They a second time through malice took the deceased, beat him, and caused his death. Sumbhoo, the prisoner, did not beat him. He called on the others to desist.

" Kassee Sircar confirmed the statement of Rughoonath.

" Goopee Singh, Babroo, and Munbuhul, burkundazes arrested the prisoner.

" Debee Chowdree states that he does not remember the date—he was selling in his shop ; Toofanee, Jugroo, and three others, whom he did not know, were carrying away the deceased ; Toofanee beat the deceased with his fist on the back, and then took him to the southward.

" Radhakishen Shaha saw the deceased lying dead near the house of Jhuloo Baboo.

" Ramkishen Shaha heard that the deceased was seized by Gooroodyal Sircar, in execution of a decree, and afterwards that he was dead.

" In the examination of the body, the civil surgeon observed an unnatural thickening of the throat, which he considered might have been caused by any manual or other pressure in the front or fore part. He also stated that such pressure would have caused sudden death, and that a venous congestion in the outer network of vessels, which he had noticed and reported, would be one of the necessary consequences of this pressure. He noticed, besides, a vascular appearance in the outer coat of the small intestine in the lower or middle part of the abdomen, which might have been caused by any heavy blow or continued heavy pressure. It is proved that a cloth was wrapped round the throat and pulled, and that the deceased was kicked in the abdomen.

" The prisoner states, in his defence, that he did not beat Ramdhun, the deceased. On Gooroodyal, the decree-holder, taking out execution of a decree in the moonsiff's court, the process

was delivered to him for execution, and he asked him for people to point out the defendant, upon which Goo-roodyal accompanied him. One Sreedhur told the prisoner to sit on the bank of the river near the bungalow of Radhamun Sircar, and then went away, but immediately returned, saying he had seized the assamee, and desired him to follow. On going further he saw that three or four persons had seized the deceased, among whom were Ramgovind, Toofanee, and others. Goo-roodyal was at a distance of four or five haths. The deceased fell, when the prisoner called out to them why they were beating him, to which they gave no answer. When the deceased was severely beaten, they left him with the prisoner.

"The futwa of the law officer acquits the prisoner Sumbhoo.

"I differ from the futwa. It is true the prisoner was in the execution of a duty: but there is strong presumptive evidence to show that, in the execution of it, he had used undue and illegal violence; and that after the arrest he allowed those who accompanied him to take the law into their own hands; that he was present when the deceased was beaten; and that, although he called out to other prisoners to desist, when they continued their maltreatment, still he took no measures to prevent them, nor did he immediately report the circumstances, as they happened, to the police. He was therefore guilty of gross neglect in the execution of his duty, and was to a certain extent an accessory both before and after the fact. I would therefore recommend that he be sentenced to imprisonment with labor for two years, the labor to be commuted on the payment of a fine of 20 rupees.

"Goo-roodyal Sircar and Ramgovind Singh and the other two prisoners in the case were convicted by me, and sentenced each to seven years' imprisonment in accordance with the futwa."

By THE COURT.

MR. J. DUNBAR.—"I have to express my entire concurrence in the remarks of the sessions judge in the penultimate paragraph of his letter. It is beyond question that the prisoner permitted the decreeholder and others to maltreat the deceased, for whose arrest he held an order of the civil court. He was in fact bound to protect the deceased and save him from all violence till he had delivered him over to the proper officer; and he is clearly guilty in not having done so. According to one witness, he himself also struck the deceased. It is no extenuation of his guilt that he called out to the others to desist, when he saw that very serious consequences were likely to result from the cruel treatment to which the deceased had been subjected. Concurring then in the conviction of the prisoner Sumbhoo Singh, the Court sentence him, as proposed by the sessions judge, to be imprisoned with labor for two years, the labor commutable to a fine of 20 rupees, payable in one month."

1849.

November 22.

Case of SUM-
BHOO SINGH.

MUSST. SOORUTH

versus

NUJEEB SHEIKH.

CHARGE—WILFUL MURDER.

1849.

November 22.

Conviction of aggravated culpable homicide, instead of murder as recommended by the sessions judge, the act appearing to have been one of sudden heat and passion, after what might have been the most serious provocation.

THE sessions judge of zillah Moorshedabad, who tried this case at the sessions held for that district in October 1849, thus detailed it in his letter of reference to the Nizamut Adawlut :

" Both the prisoner and the deceased were step-brothers. On the evening of Saturday, sunkrant, or the last day of the month of Bhadoon, Nujeeb Sheikh, the prisoner, called away the deceased towards a field in order to eat *mooree*. A short time after, loud cries of 'murder' were heard, upon which the husband of the prosecutrix, and Alee Sheikh, and others went towards the field, but returned without discovering any thing, and the prisoner soon after returned also. The prosecutrix asked him what had become of Fakeer. He answered, 'Allah janeh,' (God knows.) Dhun Mullik, the husband of the prosecutrix, and others, made a diligent but fruitless search after the deceased. On the following morning the prosecutrix, her husband, and others of the village, on searching the field, found the body of the deceased. He was lying on his side with his right cheek on his hand near to a fruit tree; three or four wounds or cuts were observed on his neck, and the spot was covered with blood. On the body being brought to the house, information was sent to the cutcherry of the zemindar; and the prisoner Nujeeb gave information to the police thanna, that his brother, the deceased, had been killed by a tiger. The body was then sent to the magistrate. The darogah carried on the usual investigation on the spot, when the prisoner confessed before him that he had killed Fakeer, the deceased, with a hansowah, which he produced from under a pakur tree, near the spot where the body was found. The darogah sent the prisoner and the hansowah to the magistrate. The hansowah with which the murder was committed has a wooden handle, weight five and a half chittacks."

After recapitulating at length the evidence in support of the prosecution, which went to prove the circumstances above detailed, the sessions judge proceeded :

" The prisoner denied the charge, and attributed his confession in the mofussil to the ill-treatment of the darogah, and his confession before the magistrate to fear. He did not recollect whether he had given up the hansowah. The witnesses named by the prisoner suspected him to have committed the murder.

" The futwa of the law officer convicts the prisoner on full legal proof of the wilful murder of the deceased, but, as the father did not prosecute, considered kissas barred, and declared him liable to akoobut shudeed. There can be no doubt of the

prisoner's guilt, and I would recommend his being sentenced to imprisonment in transportation beyond sea for life."

1849.

November 22.

BY THE COURT.

Case of NU-
JEEB SHEIKH.

MR. J. R. COLVIN.—"The circumstances under which the deceased met his death are only to be judged of, in this trial, by the statements made in the confessions of the prisoner before the police and the magistrate. There is no evidence of premeditation; for the statement of the witness, Alee Sheikh, that, shortly before the cries of murder were heard, the deceased came and borrowed his hansowah, (the instrument by which death was caused,) saying that Nujeeb, the prisoner, wanted it, does not prove, even were entire reliance to be placed on the statement, that the prisoner really sent the deceased for the hansowah; and it is not likely that the prisoner, if intending to assault and kill or wound the deceased, would have sent openly for a weapon in that manner. The statements of the prosecutrix, mother of the deceased, and of Dookhoo, widow of the deceased, are not consistent as to the circumstances under which the two parties left the house a little time before the cries were heard.

"The sessions judge ought to have distinctly referred to the purport of the confessions, and to have explained them in the body of his report.

"They are to the effect that the deceased first threw down and attacked the prisoner with the apparent intention of killing him, on account, as the prisoner suspected, of a supposition that the prisoner had an intrigue with the deceased's wife, and that, upon this, the prisoner seized the hansowah from the hand of the deceased, cast him off, and throwing him down, killed him. It is not said that the prisoner continued to be himself in any danger, when he thus killed the deceased, and the act is, therefore, not to be justified, or extenuated, upon any consideration of self-defence. But it must be taken to have been one of sudden heat and passion, after what may have possibly been the most serious provocation.

"No sufficient motive for any deliberately murderous attack by the prisoner upon the deceased is disclosed upon the proceedings. One of the witnesses, Athur Sheikh, so far supports the statement in the confessions of the prisoner, that he mentions having heard in the village, after the occurrence, that there had been an intrigue between the prisoner and the wife of the deceased. Some quarrel or malice arising out of such an intrigue, real or suspected, seems, from the papers, the most probable cause for the attack or struggle, whichever it may have been, by or in the course of which the deceased lost his life.

"I convict the prisoner of aggravated culpable homicide, and sentence him to imprisonment in banishment for fourteen years, with hard labor and irons."

MUSST. RAJKULEEA

versus

OODKURUN SINGH.

CHARGE—SEVERELY WOUNDING THE PROSECUTRIX WITH
A SWORD, WITH INTENT TO MURDER HER.

1849.

November 23.

A prisoner
convicted of
enticing a wo-
man into a

and
leading her
the day after se-
verely wound-
ing her, from
some motive
not clearly as-
certained, sen-
tenced to ten
years' impris-
onment with
labor in irons.

THE sessions judge of Behar tried the prisoner, on the above charge, at the sessions held for that district, in September 1849, and thus reported the circumstances of the case in his letter of reference to the Nizamut Adawlut :

"The prosecutrix, a young woman of fair personal appearance, after becoming a widow, continued to reside with her husband's family until, accused of intriguing with some of her brothers-in-law, she, apparently, lost caste and was turned out of the house. Her husband's relatives live at Kurrahia, and her paternal relatives at Oora, two miles distant apart. Latterly, she had found a miserable shelter with her brother at Oora. The prisoner is also connected with the prosecutrix by marriage, and also lives in the neighbourhood. I think there is quite sufficient in the circumstances of the case generally, and the admissions both of the prosecutrix and the prisoner, to support the supposition that an intrigue also existed between them.

"According to the prisoner's confessions, both before the police and magistrate, he took the prosecutrix in the Lohurdugga direction ; and on the second day's journey they reached a shed in the jungles, on the borders of this district, where they passed the night. After severely wounding the prosecutrix with a sword, the prisoner left her the next morning, and returned to his own village, where he was subsequently apprehended. The prosecutrix, unassisted, travelled back to her brother's village, Oora, and her appearance there in such a state gave rise to the present complaint.

"Dr. Denham describes her wounds as follows :—'A severe incised wound, about five inches long, on the right side of her neck (below the lower jaw), dividing the skin, muscles, and vessels of the part, and laying bare the cavity of the mouth, also some irregular wounds on the left side of the chest, dividing the skin and muscular fibres.'

"These are the facts of the case, as pretty well established both by the prosecutrix and prisoner's statements, as well as by the circumstances of the case generally ; but I must add that, before this court, the prisoner revokes his confessions, confining his defence, however, to a simple revocation of his original confessions, without in the least attempting to account for what had happened.

" The futwa of the law officer convicts the prisoner of severely wounding the prosecutrix with a sword, on his own confessions, and declares him liable to discretionary punishment by akoo-but.

1849.

November 23.

Case of
OODKURUN
SINGH.

" The facts of the case being as stated, it is much more difficult to assign the real motives for such a cruelly dastardly act. In the original statements made, both by the prosecutrix and the prisoner, they asserted that the prisoner had been put up to making away with the prosecutrix by her father-in-law, Raj Roop. But before the magistrate, the prosecutrix abandoned any such accusation, and, when questioned before this court, states that her reason for mentioning Raj Roop and his son's names, was with a view of obtaining a present of some new clothes. The prisoner, however, continued the same pretence before the magistrate, averring that Raj Roop had written to him for the purpose of removing and making away with the prosecutrix, who got hold of the letter and tore it up. There is much in such statements in themselves to carry their own discredit with them, and there is not a tittle of evidence to support them. Besides, they are much opposed to probabilities. It is not very clear whence the prisoner took the prosecutrix away. She pretends, she was still received in her father-in-law's house, and that it was ill-usage there, according to her own statement before the magistrate, which induced her to accompany the prisoner; but this could scarcely have been the case, considering the circumstances which sent her an outcast from her father-in-law's dwelling. She herself admits before this court, that she had resided with no one in particular at Kurrahia. The tenor of the evidence is, that she was at the time so far sheltered by her brother at Oora as to be allowed a hut to live in, within his premises, but apart from the rest of the family. It was to this place she returned after having been wounded. Moreover, the state of the prosecutrix's wounds and the prisoner's reply to the magistrate's question,—with what intent did you wound her?—' I did not intend to kill her, only to frighten her,' into better behaviour, I suppose, as he tells the magistrate his intimacy with the prosecutrix had existed the last six months, and that he had been put out of caste by her frequent visits and continuing to pester him. This seems by far the most probable state of the case, and, in short, there is no other way of accounting for the peculiarities attending the prosecutrix's wounds.

" The prosecutrix would have me believe that she did not awake with the infliction of such severe wounds,—which, as Dr. Denham deposes, is impossible. The sun rising awoke her, when she discovered that she was weltering in her blood and that the prisoner had left her. She thus wilfully conceals the circumstances attending the prisoner's wounding her, only witnessed by

1849.

November 23.

Case of
OODKURUN
SINGH.

themselves in this solitary hut in the jungle. But look at the state of her wounds. Had it been the prisoner's intention to murder the prosecutrix, what was there to have prevented his doing so effectually, at such an hour, and in such a solitary place?

"The prosecutrix had only one dangerous wound, the one on the right side of her neck, and which, Dr. Denham deposes, 'was more than a superficial one, having laid bare the cavity of the mouth, and might have terminated fatally, had not the inflammatory action which afterwards supervened been checked by the treatment adopted: the jaw bone was also slightly fractured by the blow.' This looks very like a wound however cruelly inflicted, yet not intended to have been murderous. The sword produced, and before the magistrate acknowledged by the prisoner as his and the one used by him, is an usually straight bladed and heavy one. The prisoner must have felt that the force of the blow had been checked by the jaw bone, and that, if the blow had been intended as a fatal one on the neck, it had failed. What was there, therefore, to have prevented his repeating a more deadly one? Then, how are the irregular wounds on the left side of her chest to be accounted for, except in accordance with the prisoner's statement? Dr. Denham, in reply to the queries, 'of what description, and how many were they inflicted with what kind of weapon, whether cuts or thrusts, and were they very severe, or very slight?' answers: 'the number I cannot tell; but so far as I remember, I should say they were inflicted with a sharp instrument, and were cuts and slight.' As these wounds, four in number, according to the native statement, were slight, and it is probable, under all the circumstances of the case, that the only severe one was not inflicted with murderous intent, the prisoner, in the absence of other evidence, is entitled to the benefit of his assertion that his intention was to punish or frighten the prosecutrix; and I therefore concur with the law officer in convicting him only of the severe wounding. Still his conduct appears to me to have been most cruel and inexcusable throughout, and, as illustrative of Rajpoot practices and violence, meriting exemplary punishment. I would therefore recommend that he be sentenced to imprisonment with labor in irons for ten years."

BY THE COURT.

MR. J. DUNBAR.—"This is certainly an extraordinary case. The prosecutrix would have us to believe that she did not awake, under the infliction of a wound or wounds which might have cost her her life; while the prisoner wishes to make it appear that he inflicted the wounds merely for the purpose of frightening her.

Neither of these statements can be believed. I am disposed to think that prisoner took the woman into the jungle with the purpose of making away with her, and that he either supposed that he had actually killed her, or that he became horror-struck at what he had done, and fled without waiting to see whether life was extinct or not. The only evidence against him, however, is his own confession, and in reply to a specific question on that point he distinctly denied the intention to kill. Giving him the benefit of this denial, the case is yet a very bad one. It is clear that he induced the woman to leave her home, on false pretences, and that, having taken her to a spot remote from any inhabited place, he wounded her so severely as to deprive her of sense, and left her to her fate. Nothing short of the punishment proposed by the officiating sessions judge would meet the atrocity of his conduct. The Court accordingly sentence the prisoner Oodkurun Sing, Rajpoot, to be imprisoned with labor in irons for ten years."

1849.

November 23.

(Case of
OODKURUN
SINGH.

GOVERNMENT

versus

LULOO KOORMEE.

CHARGE—ADMINISTERING POISONOUS DRUGS WITH INTENT TO STEAL.

THE commissioner of Patna, exercising the powers of a sessions judge, tried this case in November 1849, and thus reported the circumstances thereof in his letter of reference to the Nizamut Adawlut.

It appears that two individuals, named Naik Dhooniah and Juggun Dosadh, were travelling from Calcutta to their homes, and were met, at a place called Barra Chuttee, in the district of Behar, by the prisoner Luloo Koormee, who accompanied them on their way until they arrived at Koablasgunge, where they stopped. The prisoner purchased certain articles of food for the travellers, and prepared their dinner, in which he mixed a portion of datura. The two travellers, after partaking of this food, were rendered insensible from the effects of the datura, when they were robbed by the prisoner, who decamped with the property he had taken. The two men, Naik Dhooniah and Juggun Dosadh, were found in a state of insensibility by Petun Gorait and Bhowance Chowkeedar, when going their rounds. Medicine was then administered, and they were recovered and taken to the thanna. The prisoner, who is a notorious bad character, was apprehended and identified by the men whom he had administered the datura to and robbed. The stolen property was found in his house and was also identified. The

1849.

December 7.

A prisoner convicted of administering poisonous and intoxicating drugs with intent to steal, and who admitted that he had for 20 years been making his livelihood by such practices, sentenced to imprisonment for life, in transportation beyond sea.

1849.

December 7.

Case of LULOO KOORMEE.

prisoner was then sent in to the magistrate of Behar, by whom he was transmitted to Major Riddell, assistant general superintendent for the suppression of thuggee, &c., before whom he not only confessed the crime with which he now stands charged as regards the two travellers, Naik Dhooniah and Juggun Dosadh, but fully admitted that he was a professional poisoner.

"The evidence adduced is clear and satisfactory; and the assessors who sat with me on the trial convict the prisoner, in which finding I fully concur. Considering the nature of the crime and the extent to which it prevails, I feel myself called upon to recommend the most severe punishment, and would, therefore, suggest that the prisoner Luloo Koormee be imprisoned for life in banishment beyond sea."

BY THE COURT.

MR. J. DUNBAR.—"Of the guilt of the prisoner there can be no doubt, both as regards the particular crime charged against him in the first count, and as to his being one of a gang who live by plundering persons to whom they have previously administered poisonous and intoxicating drugs. Nothing should be left undone to exterminate these villains root and branch. The prisoner admits, in his confession before Major Riddell, that he has been making his livelihood for 20 years past, by administering poisonous drugs to travellers and then robbing them. There is nothing in his case, therefore, which should operate in his favor for mitigation of punishment. The Court accordingly sentence the prisoner Luloo Koormee to be imprisoned for life, with hard labor in transportation beyond sea."

 RAM NUND
versus

MUSST. PAATTOH.

CHARGE—MURDER OF A BOY FOR THE SAKE OF HIS ORNAMENTS.

1849.

December 7.

THE following are the particulars of this case, which was tried by the sessions judge of Cuttack, at the sessions held for that district in July 1849:

"On the morning of the 6th May, Ram Nund, the father of the deceased, went to plough his field, leaving the deceased, a boy of five years of age, with his other children in the house, with their stepmother, Musst. Paattoh, the prisoner; and on his capital sentence passed on a woman for the murder of her stepson, a child of five years of age, the act having been deliberate for the sake of plundering the child of its ornaments, as well as possibly from other motives, and there being no good ground for doubting the sanity of the woman, the sessions judge had recommended a mitigated punishment of imprisonment for life, but had referred to no circumstances which could justify the mitigation.

return home at noon, missing his son Artoh, he enquired of Musst. Paattoh what had become of him, and was informed by her that he was present a short time before, and must have gone somewhere. Ram Nund then enquired among his neighbours if they had seen his son, and, obtaining no information regarding him, he went in search of him to the Khonee river, which is near to his house, and, adjoining some jungle, discovered the body of his son with three or four wounds on the neck, from which blood was issuing, and which had been inflicted with an iron instrument called a *powarree*, a species of chisel. He then forthwith proceeded to the thanna of Banpore, and gave information of what had taken place; and the darogah and mohurer accompanied him to the place where his son's body was lying, and, after drawing up a *sooruthal*, forwarded the corpse to Pooree for examination by the medical officer, and themselves remained on the spot, endeavouring to find out the perpetrator of the murder; and on the following day, on their re-questioning the prisoner, (for she had denied all knowledge of the murder the first day,) she confessed having killed the deceased, and taken his ornaments consisting of two *khurras*, two gold *rusuneahs* or beads, and four red stones worn round the neck, and a silver *chundra*, which she produced from her waist, and then brought out from the house the *powarree* or instrument with which she effected the deed.

"The body of the child reached Pooree in too decomposed a state to admit of its being examined by the sub-assistant surgeon.

"The prisoner's confession before the police and the foyjdaree court, and the production by her of the child's ornaments and the instrument with which she killed him, constitute the evidence against her; and since the witnesses to the confessions have deposed that they were voluntarily made, there can exist no doubt of her guilt, notwithstanding the inefficient manner in which the investigation of the case has been conducted by the police and the assistant and deputy magistrate.

"The prisoner pleaded *not guilty* before this court, and stated that a year ago one Jadoo Jenna bewitched her, because she had united herself with the prosecutor instead of him, and that she became as a deranged person; but her manner and appearance do not exhibit the slightest appearance of any derangement, and Mr. assistant surgeon T. A. Wethered, in his report of the 31st May, states her to be of sound mind.

"The futwa of the law officer convicts the prisoner, Musst. Paattoh, of the wilful murder of the boy Muuneah *alias* Artoh and theft of his ornaments, on her own confessions before the police and the foyjdaree court, and the production by her of the stolen ornaments and the instrument with which she perpetrated the deed, and declares her liable to suffer punishment by *kissas*; and

1849.

December 7.

Case of
MUSST. PA-
ATTOH.

1849.

December 7.

Case of
MUSST. PA-
ATTOH.

fully concurring with him *as to the guilt* of the prisoner, I would, under all the circumstances of the case, recommend that she be sentenced to imprisonment for life, with labor suitable to her sex, in the Cuttack jail."

BY THE COURT.

SIR R. BARLOW.—"The Court, having duly considered the proceedings held on the trial of Musst. Paattoh, observe that the result of it depends materially on a point which has not been legally determined. There are two letters on the record, one from the sub-assistant surgeon and another from the assistant surgeon at Pooree, to the address of the deputy magistrate, in which those officers report the prisoner is of sound mind.

"The sessions judge has very properly taken notice of the irregularity on the part of the deputy magistrate, in not having taken their depositions.

"The question of the prisoner's sanity, or otherwise, appears from the record to have been very imperfectly investigated.

"The witnesses should have been closely examined as to the state of the prisoner's mind *at the time* of the occurrence of the murder. Occasional aberrations do not screen an offender from the sentence of the law. The conduct of the offender when laboring under mental aberration should be most particularly inquired into and detailed. Two witnesses before the deputy magistrate give a confused account of the prisoner's state. In her answer to the charge, she pleaded temporary derangement. Before the sessions judge she stated she had been bewitched. The assistant surgeon's letter is of the 31st May. The sessions judge's letter reports his proceedings of the 20th June and 4th July, in which he says the prisoner does not exhibit the slightest appearance of any derangement, and, under the circumstances, he recommends imprisonment for life. But without full and clear legal evidence as to the state of the prisoner's mind, *at the time of the murder*, the Court are unable to proceed to judgment.

"They direct that the sessions judge will make the strictest inquiry on this point, again put the prisoner on her defence, taking any evidence she may adduce, and submit the trial, with his opinion, should he deem it necessary to do so."—28th July.

In conformity with the above orders, the sessions judge reported, under date 19th September 1849 :

"I summoned, at the request of the prisoner, four witnesses named by her to prove that she was not in a sound state of mind. Three of the four have deposed that, at the time she committed the crime with which she stands charged, there was nothing the matter with her, and that she was in a sane state of mind ; but that about a year ago her husband, the prosecutor, sent her

back to her father's house, in consequence of bones and hair issuing from her mouth whenever she partook of her meals. The fourth witness could depose to nothing definite, as he lived in a different village from the prisoner.

"I have likewise examined the sub-assistant surgeon and native doctor attached to the Pooree jail hospital, who received instructions from the deputy magistrate to watch and ascertain the prisoner's state of mind during the time she was under trial at Pooree; and they both distinctly depose that they could perceive no symptoms of insanity in her conduct during that period, but she was then, in their opinion, perfectly sane; and nine females, immediate neighbours of the prisoner, the most of whom were daily in the habit of meeting and conversing with the prisoner, all depose that she was in a sound state of mind at the time she committed the murder; and though, with two exceptions, they all tell the same story about her having spit up bones 10 or 12 months ago, and that her husband in consequence sent her back to her father's house, they state that her mind was not affected thereby.

"With regard to this ailment of spitting up bones, alleged by the prisoner to have been caused by witchcraft, the Court will observe from the depositions of the native doctor and darogah attached to the Cuttack hospital and jail, which were taken before this court on the 13th instant, (these witnesses have been twice examined,) and likewise from the deposition of Mr. assistant surgeon Burton, who was examined on the 4th instant, that it is a complete piece of trickery, which the prisoner had been practising to make it be believed that she was bewitched at the time she committed the murder.

"Having learned, after taking the evidence of the witnesses cited by the prisoner in her defence, that she had been in the habit of spitting up pieces of bone when she eat her meals, since her confinement in the Cuttack jail, and that a report to that effect had been submitted to the magistrate by the darogah, I called for the report, and, on the 3rd and 4th September, when the depositions of Sagur Lall Tewaree, native doctor, and Mr. assistant surgeon Burton, were taken before the court, I made the prisoner chew some rice, and on both of these occasions she again spat the rice out of her mouth, accompanied by two or three pieces of bone; and though it was evident that the pieces of bone had not come away from any part of the prisoner's frame, and that they were old partially decayed bones, as will be seen from the samples in the cover marked A, filed with the nuthee herewith sent, both myself and the doctors were puzzled to conceive whence they came, or where the prisoner managed to conceal them, as we caused her to wash her mouth out with water before giving her the rice. I therefore directed the native doctor

1849.

December 7.

Case of
MUSST. PA-
ATTOH.

1849.

December 7.

Case of
MUSST. PA-
ATTOH.

and the darogah to keep a strict watch over her pending the arrival of the witnesses from Pooree, and to ascertain if possible how she managed to get the bones and spit them up at her will ; and on the 10th September, they reported that they had again examined her ; and though they first made a burkundaz put his fingers into her mouth, and feel if there were any bones concealed there, and he found none, and they then gave her some rice, she, to their surprise, again spat out two or three pieces of bone ; and then the darogah, to make sure, himself searched the prisoner's mouth, and, thrusting his fingers deep between the gums and flesh of the face, found some pieces of bone, which he took out, and then asked the woman whether she was able to spit out more bones, and she was compelled to admit her inability to do so, and confessed that she picked up the bones when she went to relieve herself, and concealed them about her person until she required to make use of them. She, in like manner, on the 13th instant, stated before this court that she was unable to spit up any more bones, but alleged that the darogah had beat her to cause her to make the above statement, and named four witnesses in support of her assertion. They, however, on being examined, deposed, and I believe with perfect truth, that no ill-treatment was inflicted on the prisoner.

"The futwa of the law officer, which, in conformity with the Court's orders, was called for afresh, duly convicts the prisoner of the wilful murder of the son of the prosecutor, and declares her liable to punishment by *kissas* ; and fully concurring in his verdict, I beg to recommend that, under all the circumstances of the case, as communicated in my report of the 14th July last, the prisoner, Musst. Paantoh, be imprisoned for life in the Cuttack jail, with labor suitable to her sex."

BY THE COURT.

SIR R. BARLOW.—"The prisoner's case was returned for further investigation, as directed in my minute of the 28th July last, the result of which is given in the sessions judge's letter of reference, dated the 19th of last month, now before the Court. Fully concurring with the futwa in both his letters, Nos. 171 and 216, (*a futwa of kissas*,) he recommends, '*under all the circumstances of the case*,' sentence of imprisonment for life in the zillah jail. The inconsistency is manifest, and the sessions judge's opinion cannot certainly be held to be in concurrence with that of the law officer. He should most distinctly have recorded what the peculiar circumstances are, upon which he grounds his recommendation for a mitigated sentence ; but he has refrained from so doing, except in his allusion to the trickery about spitting up the bones. At all events his proposition cannot be supported. If the prisoner be of sane

mind, nothing less than capital sentence will satisfy the demands of justice ; if otherwise, being incompetent, she cannot be pronounced guilty, and sentence should be passed in conformity with Act IV. of 1849. The middle course of imprisonment for life does not meet the exigencies of the case.

1849.

December 7.

Case of
MUSST. PA-
ATTOR.

" I have in vain endeavoured to discover '*the circumstances*' which have had weight with the sessions judge. Not a single witness on the trial deposes to the prisoner's insanity at the time of the murder. On the contrary, all speak of her as of sound intellect, though some of them state they saw her eat filth some 10 months previous, and refer to her spitting up bones at the same time. The whole record indicates to my mind that the prisoner is not insane now, nor was she, *when she committed the murder*, laboring under any mental aberration. Her own confession and the depositions of numerous neighbours and of the medical establishments at Pooree and Cuttack prove her sanity. The child of five years of age was murdered, the object of the prisoner being to possess herself of the ornaments he had on his person, and they were found on the prisoner, who gave them up : all this is satisfactorily confirmed by her confession before the deputy magistrate.

" Such is my view of the case at present. But I cannot take upon myself the responsibility of disposing of it, till the sessions judge fully and clearly records what circumstances have induced him to adopt the unusual course he has taken."—13th October.

On the 27th October the sessions judge stated, with reference to the foregoing observations, as follows :

" I was, in the first instance, induced to submit the recommendation in question, on account of the plea of unsoundness of mind (alleged to have been produced by witchcraft) set forth by the prisoner, and the irregularities in the proceedings of the police and the magisterial authorities, noticed in the 6th and last paragraphs of my letter, No. 171, of the 14th of July last ; for, notwithstanding I could discover no symptoms of derangement of intellect in the manner of the prisoner during the trial of the cases before this court, and my opinion regarding her sanity was in accordance with that expressed by the civil assistant surgeon of Pooree, in his letter to the deputy magistrate, dated the 31st May, our impressions are subject to deception, and there was no direct evidence on record as to the real state of the prisoner's mind at the time she committed the murder.

" I further beg most respectfully to state that my recommendation was likewise suggested by the commutations, made by the superior court, of sentences of *kissas* to sentences of imprisonment for life, which have come under my notice ; and in a similar case, viz. the murder of a child for the sake of its ornaments, in

1849.

December 7.

Case of
MUSST. PA-
ATTOH.

which no plea of aberration of mind was set forth, when I recommended that sentence of death should be passed on the prisoner, who was also a female, she was only sentenced to imprisonment for life. (See case of Musst. Junjallee, prisoner, decided by the Sudder Court, 20th January 1849.) And having once recommended the prisoner Musst. Paattoh to be imprisoned for life, I did not, when submitting my subsequent proceedings, held in conformity with the Court's order, consider it right to recommend that which, in the sight of the law, is a severer punishment, viz. the sentence of death.

"With reference to the Court's remarks regarding the inconsistency of my recommendation with my expressed concurrence with the *futwas* of the law officer, I beg to state that I made use of the said expression with reference to the guilt of the prisoner, and her consequent amenableness to the penalty of *kissas*, or sentence of death, though, for the reasons now communicated, I ventured on recommending a somewhat mitigated sentence being passed against her."

BY THE COURT.

SIR R. BARLOW.—"This case has been tried and reported in a very unsatisfactory manner.

"It was the duty of the sessions judge to have satisfied himself fully, and determined in his own mind, whether the prisoner was sane or insane at the time she committed the murder, and he was bound as fully to place the whole of the circumstances which had weight with him on the record, for the consideration of the Court.

"The result of the trial involved either capital sentence, if no mitigating circumstances were brought to light, or acquittal—for an irresponsible being cannot be convicted.

"The evidence against the prisoner throughout on the first, and also on the remanded trial, certainly does not justify the conclusion that her mind was affected at the time of the murder. Eccentricities or vagaries do not, in the eye of the law, form a presumption of insanity; on the contrary, a person is deemed to be sane and responsible till it shall have been proved by undoubted evidence that he was, at the time he committed the deed, not conscious of right and wrong. If the delusion under which a person labors is only partial, the party accused is equally liable with a person of sane mind.

"Such was the opinion given by the whole of the judges in conference, in answer to queries put by the House of Lords, in the case of *McNaghten*, tried for the murder of Mr. Drummond.

"If, then, the sessions judge could not convict of murder because he could not declare the prisoner sane, he should have

disposed of the case under the provisions of Act IV. of 1849, and referred to the Government, and awaited their orders thereupon.

"If, on the other hand, he considered the prisoner a responsible being, he should have recorded the grounds on which he proposes mitigated punishment.

"He holds the prisoner amenable, records the evidence of nine females who depose she was in a sound state of mind at the time she committed the murder, fully concurs in the verdict of the law officer, kissas, and recommends, under all the circumstances, imprisonment for life.

"I cannot, after the fullest consideration, find any circumstances favorable to the prisoner. I see no doubt of her sanity. She had a motive for committing the deed, viz. to get possession of the child's ornaments, which she produced. Her spitting up bones is nothing but a trick to induce doubts as to the state of her mind. And from the whole of the record I am forced to the conclusion that the prisoner should undergo the last penalty of the law."—28th November.

MR. J. R. COLVIN.—"I put out of consideration in this case the confession in the magistrate's court, which was not made throughout 'on a personal examination by the committing magistrate himself,' as specially required by paragraph 20 of the Circular Order, No. 54, of July 16th, 1830, and which cannot therefore, as it appears to me, be regarded as legal evidence.

"The confession, however, before the darogah, appears to me to have been fully proved; and it is corroborated by the abundant and direct evidence to the prisoner having herself given up the instrument (powarree) with which she committed the murder, and the ornaments which she had taken from the murdered child.

"The fatal wounds were evidently committed with an instrument such as the powarree; and the taking such an implement with her, when she went out with the child, as stated in the mofussil confession, is clear proof of premeditation, as the carrying away the ornaments, which were on the child's person, is evidence of one of the motives which may have led to the murder.

"The result of the complete enquiry which has been made on the point, leaves no doubt on my mind as to the perfect sanity of the prisoner when she committed the crime. There is, indeed, no evidence of her ever having really been of unsound mind, though there is evidence of her being of dirty or eccentric habits, and also strong evidence of her being a person who has cunningly feigned such habits to obtain impunity for her present crime, as she may have previously done for other purposes.

"Regarding the murder as deliberate, and without any extenuating circumstances, I must concur in the capital sentence above proposed."—7th December.

1849.

December 7.

CASE OF
MUSST. PA-
ATTOH.

GOVERNMENT

versus

NUBKANTH PURIKHYA AND RAMTUNNOO DEY.

CHARGE—CONSPIRACY.

1849.

December 8.

The mere reading over, or causing to be read over, to witnesses in attendance of examination a magistrate's court, notes the deposition of a witness who has been under examination, is not, in itself, a criminal offence. It is the duty of a magistrate to take proper measures for the purpose of preventing communication with witnesses in attendance before his court.

THE prisoners were brought to trial on the following charge :
 " 1ST COUNT. The prisoners Nos. 1 and 2 are charged with conspiracy to defeat the ends of justice. On the 14th July 1849, corresponding with 31st Assar, 1256 B. Æ., the prisoner No. 1 furnished the prisoner No. 2 with a paper containing notes of the examination into an alleged case of arson, then under trial before the joint magistrate of Mungulpoor sub-division, in which case the said prisoner No. 2 was a witness for the prosecution.

" 2ND COUNT. The prisoner No. 1 is charged with subornation of perjury in having so supplied the aforesaid witness—the said case of arson having been dismissed as unfounded."

The sessions judge of West Burdwan thus reported the case to the Nizamut Adawlut, in his letter of reference, dated 19th November 1849 :

" I refer this case because I dissent from the futwa given by the moulvec, convicting the prisoner Nubkanth of the crime charged against him in the first count.

" The particulars of this case are shortly as follows. Pending the enquiry into a case of arson held by the joint magistrate of Mungulpoor, (in which certain parties employed by the rival coal companies in that part of the district were concerned,) the prisoner Nubkanth, who is a mooktear in the employ of Mr. Biddle, was observed taking notes of the examination of the prosecutor in the case, which was then going on. After some time he left the court, taking the paper with him, and was then seen by Ramsuttee (a mooktear employed on the other side) to proceed towards an old building (formerly a phanree) near at hand, where some of the witnesses and others were collected, and where he gave it to a man named Ramkisto (released,) who began reading it aloud for the benefit of all those who were present. Upon this Ramsuttee came and told the magistrate what he had seen, and that officer, proceeding to the place, captured both prisoners, Nubkanth and Ramtunnnoo, the latter having the paper in his possession.

" Both these parties were then put on their trial, and eventually committed to the sessions. The case then broke down and was cancelled owing to an informality in the proceedings; but this having now been rectified, they have a second time been sent up for trial.

"Both the prisoners deny their guilt. Nubkanth allows that he took notes of the deposition, and did it by his master's orders and for his use; but he says that he gave them to another mook-tear (Bhoobun) when he came away; that hearing a great uproar and report that the magistrate had gone to the phanree, he was proceeding there, when he was taken up. Ramtunnoo admits having the paper, but says that it was given him by Nubkanth (who was going away to smoke) to hold and take care of, till he came back, and that as soon as he had got it, the magistrate came and caught him with it; that he can neither read nor write, and that it was therefore of no use to him.

"Nubkanth calls two witnesses, who endeavour to shew that he was not at the phanree when taken; but they totally fail in this; and I think that there is no doubt but that he had gone to the place to read the paper, or cause it to be read over to such of the witnesses as were there assembled, in order to *refresh* their memories when called up again by the joint magistrate, for they had, it appears, all been previously examined.

"Now the charge preferred against the prisoners is *conspiring* together to defeat the ends of justice, and I must say that I do not think this established. The utmost that can be brought home to Nubkanth is *tampering* with the witnesses, and I do not see (drawn out as the charge is) how a conviction can be had of this lesser crime. The joint magistrate has not, it appears, sought out or examined the other parties who were present in this phanree, and the whole story of what took place there rests therefore on the unsupported testimony of Ramsuttee, an opponent; and even allowing that he is guilty to this extent, as he has already been four months on bail, and during this time has twice been sent into the station, it appears to me that he has been pretty well punished for what he has done.

"Ramtunnoo is not charged with taking the paper, but only conspiring with Nubkanth; and, as I have already stated, I do not think this part of the charge brought home. There is nothing to shew and no reason to think that any *plan* was ever made to get up false evidence in this case, and something of this kind is required to prove a conspiracy, whilst, in fact, it appears that he had, previous to this (on the 11th July 1849,) given his deposition and stated all he knew of the matter, and from this first statement he never materially departed, though severely cross-questioned on the subject.

"The futwa of the moulee convicts Nubkanth on the first charge, but acquits him of the second, and Ramtunnoo also it acquits entirely. I concur in this as far as regards the acquittal of Ramtunnoo and also of Nubkanth of the second charge; but I go further, and dissent from the conviction of Nubkanth on the first charge also, as I do not consider it fairly established.

1849.

December 8.

Case of NUB-
KANTH and
another.

1849.

December 8.

Case of NUB-
KANTH and
another.

Under all the facts of the case, however, and as the moulvee convicts, I have no power to direct his release, and therefore submit the proceedings for the orders of the superior court."

BY THE COURT.

MR. J. R. COLVIN.—"This case shews great precipitation and inexperience on the part of the committing joint magistrate.

"A conviction of conspiracy cannot be had where there is no evidence of an agreement or combination of any kind. And I therefore acquit the prisoner No. 1, Nubkanth Purikhya.

"But besides this there was here no ground for a commitment at all. It was the duty of the joint magistrate to have kept witnesses, who were in attendance before his court, so under watch as that no communication could be held with them.

"The commitment has been made upon the evidence of only one witness, that there was any communication with, or to the witnesses in attendance at the joint magistrate's court; and the mere reading over, or causing to be read over, to such witnesses, where opportunity is afforded for it, notes of the deposition of a witness under examination, is not, in itself, a criminal offence.

"The commitment on the count of subornation of *perjury*, on which there has been a final acquittal by the sessions court, was, upon such evidence, wholly unwarranted."

NEAL SING

versus

METING *alias* DOOMASHOO, PREDEEP, AND
HOOTASHOO.

CHARGE—WILFUL MURDER.

1849.

December 8.

The principal in the murder of two girls, one of 16 and the other of 7 years of age, sentenced capitally, and two principals in the second degree sentenced to imprisonment in transportation

THE deputy commissioner of Assam, who tried the above prisoners in the month of October 1849, thus reported the case in his letter of reference to the Court:

"It appears the prosecutor is the father of the two girls that have been murdered. The girls' names were Joggye, aged 16 years, and Dhuggye, aged 7 years. They were killed by the prisoners on the 19th of August last, in the day time, in Kootah Ghaut Pergunnah. The prosecutor was from home when the prisoners went to his house, which he had left in charge of his two daughters, so he cannot give any particulars respecting the manner the prisoners struck his daughters. He has stated that, on his return home at noon, he found both his daughters dying, one inside, the other outside his house, with fractured skulls.

for life, it being probable from the evidence that violence had been attempted, if not completed, on the person of the elder girl.

"The prisoners have all along made a full confession. By it, it appears the prisoner Meting was desirous of obtaining the elder daughter of the prosecutor ; that he had for a month previous been attempting to seduce her, and at last got the other two prisoners, Predeep and Hootashoo, to accompany him to the prosecutor's house, apparently with the view of carrying his desire into effect by force. They, by their own statement, took up a position in the prosecutor's cow-house, where the eldest girl saw them and gave them some abuse. Meting got angry and hurled a large stone, which was near the spot and belonged to prosecutor, weighing two seers and two and half chittacks, at her, and struck her on the temple ; she fell to the ground, but managed to crawl into her house ; the prisoners followed, when (as Meting states) Predeep took up the stone and struck the girl with it on the face ; afterwards, Meting states, he inflicted several blows on the girl's head with the stone and nearly killed her on the spot. The noise brought the younger girl, Dhuggye, to the spot : she was immediately attacked by the prisoners, Predeep and Hootashoo, who fractured her skull. It is not distinctly recorded what caused the prisoners to leave the prosecutor's house ; but it may be presumed they thought they had completely killed both the girls and ran off.

1849.

December 8.

Case of MET-
ING and
others.

"The names of the persons whose evidence has been taken, are detailed in the margin,* that of the last perhaps the most important, as he saw the prisoner Predeep running away from the prosecutor's house on the morning of the murder, and by his statement the prisoner was apprehended, confessed, and accused Meting and Hootashoo, who also confessed. The remainder of the evidence proves chiefly the confessions.

- A. Batashoo.
- B. Nodo.
- C. Runjeet.
- D. Mongloo.
- E. Kaudoorra.
- F. Gorachund.
- G. Sechoo.
- H. Orung.
- I. Khudder Bux.
- J. Boola Burkundanz
- K. Herdeo Delchet.
- L. Doctor Tutlock.
- M. Melan.
- N. Baghoo.
- O. Bhoy Sing.

"The prisoners have given no defence, having from first to last confessed.

"The magistrate and native jury before which the trial was held, concur

in convicting the three prisoners of the charge, viz. wilful murder.

"I am of opinion that the three prisoners are guilty of the two murders charged, but that, from their previous proceedings, it must be presumed they went to the prosecutor's house, not with the intent of committing murder, but only rape on the deceased girl, Musst. Joggye, and were induced to commit murder after their arrival there from the circumstances that then transpired. They appear to have gone unarmed, and to have committed the murder chiefly with a stone they by accident found on the spot. Their conviction rests, although not altogether, chiefly on their own confessions. Under such circumstances, I venture to

1849.

December 8.

Case of MET-
ING and
others.

recommend capital punishment be not inflicted on either of the prisoners, but that Meting be transported beyond sea for life, and Predeep and Hootashoo be imprisoned for life in the Allipore jail. I have been induced to recommend but a small difference in the measure of punishment, as I conceive the prisoner Predeep and Hootashoo were very nearly, if not quite, as active in causing the death of the girls as Meting, and they appear to have been very willing and ready, from first to last, to help to commit any crime that was proposed, and must therefore be most desperate bad characters. The chief reasons for my suggesting the prisoners Predeep and Hootashoo should be imprisoned in the Allipore jail is, that a slight distinction should be made between their and Meting's punishment, as he no doubt was the instigator."

BY THE COURT.

MR. J. R. COLVIN.—"I would convict the prisoner Meting *alias* Doomashoo, as the principal in the murder of the girls Joggye and Dhuggye, and the prisoners Predeep and Hootashoo as principals in the second degree in those murders, and sentence the prisoner Meting capitally, and the two others to imprisonment in transportation for life. I cannot consider this as a case presenting any extenuating circumstances. Without referring to the statement of the girl Joggye having crawled into the house, and being followed by the prisoner after she had been first knocked down by the blow from a heavy stone, (a statement which appears only in the confession of the prisoner Meting before the magistrate,) or to the statements in several of the confessions that the prisoners went *with the intention* of killing the girl Joggye if she did not comply with their desires, it appears to me clear that these brutal murders were committed upon no such provocation as could reduce the offence below that of wanton and wilful murder. The deposition of the assistant surgeon makes it probable that violence had actually been attempted on the girl Joggye's person, which is nowhere spoken of in the confessions: the most reasonable supposition is that she was murdered in brutal rage in consequence of her offering resistance.

"The fact of the party having gone unarmed does not seem to me, under the circumstances, to lessen the heinousness of the crime."

SIR R. BARLOW.—"The prisoners confess the murder; and from their confessions, taken with the deposition of the assistant surgeon, on a *post mortem* examination, there is strong reason to conclude that they completed the intent with which they went to the deceased's house. The case is one of much aggravation, and I concur in the sentences proposed to be passed by Mr. J. R. Colvin."

GOVERNMENT

PURMESHUR DUTT, KISHENPERTAB, SEWA LAL,
AND RAMSURN LAL.

CHARGE—FORGERY.

THE prisoners Purmeshur Dutt and Kishenpertab were charged with forgery, in attempting to give effect to documents connected with the sale of the rights and interests of Jobraj Singh in mouzah Cheraud, in which the name of Ghusectun Lal, purchaser, was altered to Guneshee Lal; and Sewa Lal and Ramsurn Lal, with forgery in witnessing a power of attorney purporting to be from Guneshee Lal to Kishenpertab and another mooktear, the said Guneshee Lal not being at the time in Chupra.

This case, which was tried at the sessions held for zillah 'Sarum in October 1849, was thus reported in the sessions judge's letter of reference to the Nizamut Adawlut :

" The prisoner Purmeshur Dutt, with the concurrence of the law officer, has been convicted of wilfully issuing forged papers knowing them to be false and fabricated, and a sentence of five years without labor or irons has been passed upon him, and the execution stayed (as usual) pending this reference. The prisoners Sewa Lal and Ramsurn Lal have been acquitted by this court and released. The case is submitted in consequence of a difference of opinion between the law officer and myself, in regard to the prisoner Kishenpertab, who has been acquitted by the futwa of the law officer. My reasons for dissenting from the futwa are as follows—

" The rights and interests of Jobraj Singh, the father of Ghusectun Lal, in the estate of *Cheraud*, were originally sold on the 13th April 1846, in execution of a decree obtained by Jowahir Saho, and the said rights were purchased (surreptitiously) in the name of Ghusectun Lal, his minor son. This sale took place at the collector's office; and in the certificate of sale, despatch, and receipt of earnest money, payment of balance, &c., the name of Ghusectun Lal was distinctly recorded, and the deputy collector, on the 22nd August 1849, officially reported to the magistrate that Ghusectun Lal had been the purchaser at that time.

" Subsequently the rights and interests of the said Ghusectun Lal, as heir of Jobraj Singh, in the identical property, were again sold in execution of a decree obtained by Junwar Dass *versus* Jobraj Singh, dated 31st May 1845. This second sale took place at the additional principal sudder ameen's court on the 18th December 1848; and Sheopurkash, Ram Lal, and Jummo Lal became the joint purchasers. This sale was apparently made and confirmed without any objections being preferred. Upon these purchasers,

1849.

December 15.

Prisoners, charged with forgery in attempting to give effect to forged documents, acquitted on the ground that the evidence did not shew either that the documents really had been fraudulently altered, or that the prisoners were aware that the alterations in the said documents had been made with fraudulent intent.

1849.

December 15.

Case of PUR-
MESHUR and
others.

however, endeavouring to *take possession*, they were opposed by Ghuseetun Lal's party; and to prevent a breach of the peace (which was anticipated) the case was brought by the magistrate under Act IV. of 1840.

"This Act IV. case was conducted by the prisoner Purmeshur Dutt, the private agent on the part of Musst. Ruftun Koer (the widow of Jobraj Singh) and her son, the aforesaid Ghuseetun Lal.* Kishenpertab was the court agent, or mooktear, employed by the same party; and Sewa Lal and Ramsurn Lal were the witnesses who attested the said power of attorney in favour of Kishenpertab and Rugobuns, (the two agents employed to conduct the Act IV. case.) This power of attorney, however, instead of being executed by *Ghuseetun Lal*, the former purchaser, was said to have been the act of *Guneshee Lal*. Kishenpertab, the court agent, received the several documents in proof of Guneshee Lal's purchase in 1846, from the hands of the prisoner Purmeshur Dutt at the magistrate's office, and, after assisting in causing to be entered in their petition a list of the collectorate proofs in support of the sale to *Guneshee Lal* as they averred, *filed* the said petition with the fabricated documents in the magistrate's court.

"*In the whole of these documents (six in number)* it was found that the name of *Ghuseetun* (the purchaser of 1846) had been *altered* or changed into *Guneshee*, the name of a relative.

"The motive of this forgery, and the parties who were employed or took part in presenting these fabricated papers before the magistrate's court, must now be traced, in order to show by direct or circumstantial evidence how far Kishenpertab was interested in the matter, or took part in the affair, and by implication, the extent of his guilt as an accomplice.

"The motive was obvious. The rights of Jobraj Singh in this property (Cheraud) had been sold by one decreeholder and surreptitiously bought at auction in the name of his son. In consequence of this, the estate being still recorded in the name of the son Ghuseetun, it was again proposed for sale in execution of another decree against the father; and it was the object of Ghuseetun's party to make out that he, Ghuseetun, had not been the original purchaser in 1846, and that the second sale was illegal, and thereby retain possession of the estate under the assumed name of *Guneshee*, which would also prevent the estate being afterwards liable for Jobraj's debts. It was a silly attempt, and probably only intended to benefit by the fraud *during the interval* between the period of possession (if obtained) under the

* "He endeavoured to prove that he had been previously *discharged*, but it was evident that he continued to act in that capacity, and held possession of her papers up to this time."

summary proceedings of the Act IV. case, and the time which might elapse before the second purchasers eventually recovered their just rights by an action in the civil court.

"The evidence against Kishenpertab, whom the law officer has acquitted, is as follows:

"*First.*—Kishenpertab was the general mooktear in the foudaree court at Chupra, on the part of *Ghuseetun Lal*, and Musst. Rutton Koer, his mother, and the estate of *Cheraud* (formerly the property of Musst. Mungloo Koer and Kousla Koer, and subsequently of Rajkoomar Singh and Jobraj Singh, which also was formerly under the Court of Wards, and respecting which numerous cases have been adjudicated by the courts) is perhaps as well known to the wukeels and mooktears of Chupra as any estate in the district.

"*Secondly.*—He had before acted as agent for the proprietors of the Cheraud estate, and knew full well that *Purmeshur Dutt* was the *dewan* (as he is styled,) or private agent on the part of Musst. Rutton Koer and Ghuseetun Lal, (heirs of Jobraj Singh, deceased,) and of Rajkoomar Singh, his brother.

"*Thirdly.*—With this knowledge, which may be fairly assumed, *he wilfully accepted and signed the power of attorney on the part of Guneshee Lal as the purchaser of Cheraud, knowing that his own client Ghuseetun Lal was the actual purchaser.*

"*Fourthly.*—He moreover assisted in preparing the petition to be presented before the magistrate, and *he was the person who actually presented and filed before the magistrate's court these collectorate papers, in which the name of Ghuseetun had been clearly altered into Guneshee.*

"*Fifthly.*—Rughobuns (the other agent,) who was apparently kept in ignorance of the fraud, and accordingly acquitted by the magistrate and cited as a witness, affirmed that Kishenpertab assisted Purmeshur Dutt in dictating the contents of the fabricated papers to him, *he (Rughobuns) inserting the list in the petition upon their dictation.*

"*Sixthly.*—It is quite incredible to suppose that he (Kishenpertab) could have done all this, without seeing that the name of *Ghuseetun* in every one of the papers had been obviously obliterated and changed to *Guneshee.*

"*Seventhly.*—Six witnesses have attested the fact that Kishenpertab read the papers in their presence, and assisted in dictating them to the scribe Rughobuns, telling him that Purmeshur Dutt was the private agent of the party, and there was no cause for doubt, *'that he himself had examined the papers, and they were all right.'*

"*Eighthly.*—It was proved in evidence that Kishenpertab had previously paid certain fines, levied upon his client Ghuseetun Lal as *malik of Cheraud*, into the magistrate's court, and therefore his

1849.

December 15.

CASE OF PUR-
MESHUR and
others.

1849.

December 15.

Case of PUR-
MESHUR and
others.

knowledge of Ghuseetun Lal being the proprietor of the estate, and not Guneshee as the papers set forth, is obvious.

“*Ninthly*.—It is also clear that none but Ghuseetun Lal’s party (who alone were interested) would have attempted this fraud, with a view of recovering their lost estate, or rather holding out against the new purchasers (the rightful owners) by every means in their power; and who are the prisoners? Purmeshur Dutt and Kishenpertab are the *private*, and the other the *public* authorized agent of Ghuseetun Lal.

“*Tenthly*.—The name of Guneshee Lal *alias* Kunnya Lal (who is a brother-in-law of Ghuseetun) was evidently selected by the Ghuseetun party, because the transformation of the two names in the Persian character is easily made, and if discovered (Guneshee being a relative) the estate would still remain as a benamie purchase in the family.

“Kishenpertab defends himself by throwing the *onus* on Purmeshur Dutt, saying that he (Purmehsur Dutt) alone dictated the papers, and that he acted entirely under his orders; but this is refuted by Rughobnns, the scribe, who declared that *both* assisted in dictating to him the said list of fabricated papers; and his participation in the fraud is, I think, obvious.

“If the Court concur in the conviction of Kishenpertab on strong presumption of ‘wilfully issuing forged documents and papers knowing them to be false and fabricated,’ I would suggest a corresponding punishment to that awarded to his accomplice, Purmeshur Dutt, viz. five years without labor or irons.”

BY THE COURT.

MR. DUNBAR.—“To bring home to the prisoners the crime with which they are charged, it was necessary to shew, first, that the documents had been really, designedly, and fraudulently altered to serve a bad purpose; and secondly, that the prisoners were cognizant of this, when they tried to give effect to them by filing them in the case under Act IV. of 1810.

“In regard to the first point, I do not think that the collector’s roobukaree of the 22nd August 1849 in itself constituted actual evidence of a criminating character. In the documents filed by the prisoners the name of Ghuseetun Lal would appear to have been first written, and then to have been altered to Guneshee Lal, but there is nothing to shew that this was not done at the time, and advisedly, with the view of correcting an error of inadvertence. There are several circumstances connected with the case, which favor the presumption that Guneshee Lal was the real purchaser. In order to clear up all doubt upon this subject, the magistrate should have taken the evidence of Chuttur-dharee Singh, the agent, who bought the property, of the person who took down the names of the bidders at the sale, and of the

mohurir who filled up and issued the documents supposed to have been fraudulently altered. Guneshee Lal should also have been examined. But even had it been established that the alteration was unauthorised and done with evil intent, there is not enough on the record to prove that the prisoners were cognizant of the fact; indeed, the contrary may not unreasonably be presumed, from a consideration of the circumstances. Guneshee Lal had, by a petition, dated the 31st October 1848, come before the principal sudder ameen, and openly tried to stop the second sale of Cheraud, declaring himself, and not Ghuseetun Lal, to be the real owner, and offering to file these very documents in support of his claim. It is also clear from the evidence of the putwaree and eight other witnesses, examined by the magistrate in the case under Act IV. of 1840, from the kuboolcuts filed in that case, and from the report of the darogah, dated the 21st July last, that Guneshee Lal had been in possession ever since the sale in 1846. With these facts before me, I do not see that the prisoners can be held (without positive proof of previous guilty knowledge of fraud) to have done intentional wrong in undertaking to file, before the magistrate, in 1849, the documents which their principal had offered to the principal sudder ameen in 1848, and which were only meant to corroborate the fact of his possession, to which there was besides such direct evidence. I need only observe, further, that Ghuseetun Lal, when examined by the magistrate, said nothing whatever tending to shew either that Guneshee Lal had not been the purchaser, or that the prisoners had been guilty of fraud or forgery in supporting his cause, and filing his documents.

“ With reference to what has been said above, taking the collector's roobakarce to be the only evidence (exclusive of the suspected documents) against the prisoners, and regarding that as inconclusive and insufficient, I acquit both prisoners, and direct their release.

“ I observe that Sewa Lal and Ramsurn Lal were acquitted by the sessions judge. The charge upon which these men were committed seemed so extraordinary, that I called for the statement of acquittals for October, that I might learn the particulars of the case as regarded them. I find they were the subscribing witnesses to the power of attorney given by Guneshee Lal to Kishenpertab and Rughobuns. If they were suspected of having falsely sworn that Guneshee Lal had, in their presence, acknowledged the mooktearnamah, the proper charge against them would have been perjury; or if it were held that Guneshee really did give the power of attorney, but that these men consented to become witnesses, knowing at the time that it was meant to enable the mooktears to file fabricated documents, they ought in that case to have been committed as

1849.

December 15.

Case of PUR-
MENHUR and
others.

1849.

December 15.

Case of PUR-
MESHUR and
others.

accessaries to the forgery. But the charge of forgery in merely witnessing a deed, is manifestly absurd, as a man cannot possibly be guilty of forgery in signing his own name, however bad or iniquitous the deed may be to which he attaches it.

GOVERNMENT

versus

SHEIKH OOMUR, IKTYAR, FUTTEH MAHOMED, BUKTAR MEER, SUDDUROQDDEEN, DOWLUT *alias* LATIAH DOWLUT, DOWLUT, NOOR MAHOMED, AKBUR, WAHID GAZEE, SON OF DHUN GAZEE, ASEEM FAQUEER, SHEIKH HOSAIN, DOWLAH GAZEE *alias* DOWLUT GAZEE, HUBBEE, ATTAOOLLAH, HIMMUT, JOOMUN, ANEEZ, ALLAH BUKSH, BECHOO, KURREEM, TAMSIA GAZEE, BUKTAR, SON OF SOONA GAZEE, JOGAI, ZUHEEROODDEEN, PANDUB, NASOO, MOHUN GAZEE, SESOUREE, BUKTAR, SON OF RUNA GAZEE, DHOONAH GAZEE, NEAMUT BEPAREE, ABDOL, RAMDASS NATH, NILMONEE NATI, BEENUD SIRKAR, WAHID GAZEE, SON OF GAZEE, AND PANCHOO.

CHARGE—AFFRAY WITH MURDER AND WOUNDING.

1849.

December 22.

On the trial of a number of ryots for an affray, attended with homicide and wounding, with the armed servants of the farmers, it appeared that the ryots had been provoked on the night previous to the occurrence by serious violence and ill-treatment, on the part of some of the farmers' servants, accompanied by several police and revenue burkundazes, and that, in the affray, four of the ryots were killed, and four wounded by stabs or thrusts, while the wounds inflicted on the farmers' servants were comparatively inconsiderable, and the ryots had not ill-treated four of those servants whom they seized and carried away from the scene of the affray. Under the peculiar circumstances of the case, it was thought sufficient to sentence the principal leader of the ryots to imprisonment for two years with a fine of 30 rupees, and the remainder of the party to imprisonment for one year, with a fine of 15 rupees each.

THE prisoners were tried at the sessions held for zillah Tipperah, in August 1849, charged, first, with the wilful murder of Muneerooddeen, secondly with the wilful murder of Dil Mahomed, and thirdly with committing an affray in which Muneerooddeen and Dil Mahomed were killed, Amudee and Neamutoollah so severely wounded that they afterwards died of their wounds, and Panchoo, Wahid Gaze, Ramdass, Nilmonce, Asadoollah, Panchkoree, Imamooddeen, Kangalee, Noor Mahomed jemadar, Sulæmooddeen, and Asruf were wounded.

The sessions judge thus explained the case in his statement of convictions.

4 The jowar Musjidpore forms a part of the eight anna share of pergunnah Buldakhal, a Government khas mehal in this district. It consists of 11 mouzahs, and is at present leased to

Doorgapersaud Dass and Kureemooddeen Chowdree, at an annual rent of rupees 5,871-5-1. The principal bazar in the jowar is Lallpore, on the north bank of the river Goomtee. The ryots of the jowar have long been notorious as a violent and turbulent body of men; and a sort of confederacy has always existed among them for passive or active resistance to the lessee for the time being, should he not agree to their terms. The criminal and revenue courts have furnished evidence of the violent nature of their proceedings, in the shape of official documents filed in the case.

“ For some months previous to the occurrence of the affray, disputes would appear to have existed between the ryots and the present lessees; and on the 17th February last, the officiating magistrate, Mr. E. J. C. Richardson, by an order passed on the petition of one Alla Buksh, ordered the darogah to proceed to the spot, to prevent a breach of the peace. Before that order reached the thauna, however, the mohurir had been deputed by the darogah; and on the 20th, the former reported that the greatest excitement prevailed in the jowar, the ryots having leagued together, and threatening an attack on the farmers’ cutchery at Lallpore, and on the bazar itself, that the shopkeepers were prepared to leave the bazar, and that the most stringent orders were necessary. On the 21st, the officiating magistrate passed an order on this report, directing the three sirdars named by the mohurir to be sent in, for the purpose of being bound over in penal recognizances, requiring the names of the leaders, and desiring the darogah not to leave the spot until further orders, and to prevent any outbreak.

“ Things remained in *statu quo* until the night of 2nd March, when some of the farmers’ people set out from Lallpore, with some peons of the collector’s office, for the purpose of apprehending certain defaulting ryots in Bajrah, one of the mouzas of the jowar, on process taken out by the farmers under Regulation VII. of 1799. In the course of execution of this process, an affray took place, which formed the subject of trial No. 1, in the abstract of acquittals for the month; but with a view to the correct understanding of the merits of the present case, it is proper that both cases should be included in these remarks. The prisoners in the Bajrah case were servants of the farmers and were committed in both cases. They were charged with attacking and plundering the house of the prosecutor, the son of one of the defaulting ryots, wounding three, and carrying off two of the villagers, the two latter being among the defaulters. The evidence for the prosecution, however, was rejected as wholly unworthy of credit. That an affray did take place, there can be no doubt, but it evidently did not bear the character attributed to it by the wit-

1849.
December 23.
Case of
SHEIKH
OOMUR and
others.

1849.

December 22.

Case of
SHEIKH
OOMUR and
others.

nesses; and that any of the prisoners were concerned in it, appears more than doubtful, so contradictory and evidently false is almost the whole of the evidence. The true story, I have little doubt, was told by two peons, who, at first defendants, were made witnesses (not approvers) by the officiating magistrate, Mr. O. W. Malet, but their evidence being entirely opposed to that on which the commitment was based, they did not appear in the calendar. According to them, the apprehension of two of the defaulting ryots led to a rising of the villagers, which ended in an affray and rescue.

"On hearing of what had occurred at Bajrah, the darogah, who was at Lallpore, about a couple of miles off, immediately set out for the former place. He commenced the investigation, but, the villagers refusing to come forward, he shortly returned to Lallpore, leaving some chowkeedars in charge of the wounded men, and stating that he would return in the afternoon to prosecute the investigation. The villagers did not await his return, however, on the ground that he had taken part with the farmers: they sent the wounded men to another thanna (Daoodkandee,) a rising of the ryots of the jowar took place, and they proceeded in small parties to Lallpore, until they numbered, apparently, some thousands.

"On their approaching the bazar, it was suggested to the darogah that, if he would secure the farmers' burkundazes and other cutcherry servants, from 12 to 16 in number, an affray would be prevented. Acting on this advice, he brought them to his quarters in the bazar, confined them in the house, and placed burkundazes over the doors. He then had a short parley with the most forward body of the rioters, but could make nothing of them. They threatened his life, and called upon him to deliver up the farmers' people. In fear of his life, the darogah returned to his quarters, on the pretence of acceding to this demand, but in reality to endeavour to make his escape; and this he did with difficulty, owing his safety to the good offices of a merchant, who concealed him in a chest. The house in which the farmers' people were confined was immediately attacked by the rioters. The burkundazes, after some of them had been knocked down, followed the example of the darogah, and the farmers' people were left to the fury of the enraged multitude. In self-defence, having no means of escape, they attacked their assailants, rushing upon them with sulphées (a rude sort of spear) and clubs; and notwithstanding the extraordinary disparity of numbers, the affray lasted till night, by which time several persons on each side had been wounded, and four of the ryots either killed or so severely wounded that they died soon after. The farmers' people concealed themselves in different

houses, till the police came forward, the ryots remaining in possession of the bazar all night. It does not appear by whom the men were killed; but however that may be, the homicide was excusable, and on that ground the prisoners on the farmers' side were acquitted. Of that number, the names of six of the prisoners appeared in the usual list of guards, &c., filed by the farmers in the criminal court, in September last. Among the witnesses for the defence were some of the burkundazes, who were placed over them by the darogah in the house in the bazar.

“The evidence against the prisoners on the other side, the ryots, namely, consisted chiefly of their thanna and foudjaree confessions or admissions, and the evidence of a large body of witnesses, principally shopkeepers. Some of them were wounded also, and shewed their wounds; and others made admissions at the trial more or less criminatory. The confessions or admissions were almost all to the same effect, viz., that the prisoners went to Lallpore, to assist in the apprehension of the offenders at Bajrah; that the darogah disappearing, the farmers' people came forward, and made demands on them for an illegal cess; and that they, refusing, set out on their return to their home, when they were attacked by their opponents. These admissions are in the highest degree confirmatory of the other evidence for the prosecution: in the only points in which they differ from it, they are manifestly absurd. At the trial, the prisoners for the most part pleaded an *alibi*, and stated that their confessions had been extorted, or denied that they had made any, either at the thanna or before the magistrate. In convicting them, I was guided almost entirely by their admissions and confessions, supported by witnesses, by the evidence adducible from their wounds, and the presumption arising from their being named by their accomplices. Of the 38 punished, one only, Beenud Sirkar, was convicted on the evidence of witnesses and the presumption arising from his being named by accomplices; but he was proved to have acted a forward part by the testimony of a large body of witnesses who know him well: and one of the ringleaders, Neamut Beparee, (described by some of the witnesses as “naka,” from speaking what is vulgarly called “through his nose,”) only admitted—at the thanna, before the magistrate, and also at the trial—that he went to the bazar after the fight was over, to see his relative Dil Mahomed, who was killed; but the evidence of the witnesses against him was quite unobjectionable. During the trial, he was openly told by some of the other prisoners that it was owing to him that they were in their present situation. A large body of witnesses were named to prove an *alibi*, but a few only were examined. The trial occupied a very long time,

1849.

December 22.

Case of
SHEIKH
OOMUR and
others.

1849.

December 22.

Case of
SHEIKH
OMUR and
others.

and was conducted with the greatest possible care. It was held with the assistance of two assessors, passed candidates for moonsiffships, who acquitted only *sixteen** of the *thirty-eight* whom I acquitted. After taking their verdict, I went carefully through the whole of the evidence, and acquitted all against whom there was not the strongest proof, placing little faith in the evidence of eye-witnesses alone, being fully convinced that it was not generally trustworthy in respect to a great proportion of the prisoners, owing to the discrepancies it contained, and giving the prisoners the benefit of any doubt as to their having been actually concerned in the affray, on consideration of the circumstances described in their confessions or admissions."

The prisoners were convicted of being accomplices in an affray attended with homicide and wounding, and were sentenced to five years' imprisonment with labor and irons, with the exception of Neamut Beparee, who was sentenced to imprisonment for seven years.

On appeal to the Nizamut Adawlut, the case was laid before Mr. J. R. Colvin, who recorded his opinion as follows.

"It appears to me, upon the most attentive consideration of the particulars of this case, that the just measure of punishment called for by the conduct of the prisoners has been very considerably exceeded.

"The two darogahs of the Thorla and Daoodkandee thannas, who have been concerned with the case, seem to have acted very differently in regard to it. The magistrate, in his proceeding of 5th March 1849, by which he suspended the former darogah from his situation, states that that officer had sent no report of the deaths and severe woundings which had occurred on the 3rd March, and had made no investigation on the subject of them. There is otherwise on the papers much ground to suppose that he unduly favoured and supported the party of the farmers. The Daoodkandee darogah submitted a very full report, which throws all the blame of the earlier proceedings on the farmers and their people, while it charges the ryots (of whose party all the prisoners are) with having subsequently risen only in retaliation, when they made the tumultuous and menacing assemblage and assault, out of which the present trial has arisen.

"The servants of the farmers, who were charged with having assaulted the houses of the ryots, &c., on the night previous to the assault in question, have been acquitted in that case. I am, however, strongly convinced that there was much unwarrantable and irritating violence, and probably criminal violence, in the con-

* "The assessors acquitted *four* on the side of the ryots, and *twelve* on the side of the farmers—*vizt* abstract of acquittals."

duct of the strong party of burkundazes, peadahs from the collector's office, and some at least of the armed servants of the farmers, who went on that night to the village of Bajrah, for the ostensible purpose of seizing defaulters under a Regulation VII. of 1799 process, and of apprehending some persons upon orders of the magistrate. It is certain that, in that case, three of the ryots were wounded, one of them dangerously, with sharp weapons; and the statements of the two persons, referred to by the sessions judge as having been made witnesses by the officiating magistrate, give no kind of explanation upon that point. In the mofussil statements of several of the farmers' own servants, (see especially the statements of Assadbolla, Ameer, and Kungalee, in the Bajrah as well as in the present case,) there are ample admissions of there having been a night attack on, or violent entrance into, the village of Bajrah, with wounding and some plunder, and that it was in consequence of this that the ryots assembled in large numbers the next day, and advanced in force upon the bazar and cutcherry at Lallpore, where the farmers with their people and the Thorla darogah and burkundazes at the time were. A general rising of the ryots in this manner, with show of open violence towards the officers of Government, is, in itself, very unlikely to have taken place excepting upon aggravated provocation.

"It was the duty of the ryots, of course, to seek redress only by legal and peaceable means; and the probability is that they were, when once assembled, prevented only from proceeding to great excesses by the powerful opposition which they met with from a dozen or more of the farmers' servants, armed with sulphées or spears and other mortal weapons. Four of their number have however been killed, and four others wounded by stabs or thrusts, while the wounds sustained by five of the farmers' people have been, and only in one instance of any severity, wholly by sticks, excepting as to one man who is described by the medical officer to have had two slight flesh wounds apparently by a sulphée; and four of the farmers' people, who were seized and carried away by the ryots, suffered no illtreatment from them.

"On the whole circumstances of the case, I think that it will be now quite sufficient for the ends of justice and example, that the prisoner No. 62, Neamut Beparee, as the principal leader of the ryots, should be sentenced to imprisonment with irons for two years and payment of a fine of thirty rupees, and all the other prisoners to imprisonment without irons for one year, and payment of a fine of fifteen rupees each, the fines, if not paid within one month, to be commutable to labor in the usual manner, and the periods of imprisonment to be reckoned from the date of the conviction by the sessions judge.

1849.

December 22.

Case of
SHEIKH
OOMUR and
others.

MUSST. KUDUM

versus

MUGUN, JEETOO, GHUNOO, KANDOOA, MOIHUN, BOHORA, MITKOO, DHUNNOO, BEESRAM, PRITHOOA, AND GOOROObUKSH.

CHARGE—DACOITY WITH TORTURE.

1849.

December 22.

Acquittal of prisoners on the ground of marked discrepancies between the first statement of a prosecutrix at the thanna, and her subsequent depositions, and of improper delays in the record of confessions before the police.

THE deputy commissioner of Hazareebagh, who tried the prisoners at the sessions held in November 1849, thus reported the case to the Nizamut Adawlut :

The prosecutrix states that, one night in Bhadoor last, her husband being absent from home, a band of dacoits came and entered the house by withdrawing the tathee or screen which was placed against the doorway. They had with them lighted torches. They immediately bound Goput Hajam with a rope, covered his eyes with a cloth and laid him on the ground. They then followed prosecutrix into a room and the prisoner Mitcoo struck her on the back and other places with a staff. The prisoner Dhunnoo had then a lighted torch in his hand and by its light prosecutrix recognized him and also the prisoner Mitcoo, Prithooa, Beesram, Gooroobuksh, and Bohora, six persons ; these came into the room while the others moved about elsewhere. Prosecutrix then went and hid herself under a rice basket, as also did Musst. Roopnee, but the dacoits made search and having dragged prosecutrix out, they bound and beat her ; and desired her to tell where the money was kept. She said there was none, upon which Dhunnoo and Mitcoo and Gooroobuksh began to burn her with the torch, and when they began to light a fire on the hearth, and to say they would set her on it, she became alarmed and showed the place where rupees 60 were buried. They then took her to various parts of the house, threatening her and seeking for money. At last they desisted and let her go ; but they took away with them all the property that was in the house. Notwithstanding the outcry, none of the villagers came to assist. The dacoits had ashes on their face and cloths round their heads ; only their faces could be seen. Mitcoo and Gooroobuksh had swords, the rest had staves. The prisoners were previously known to prosecutrix ; they were in the habit of coming to the shop (a spirit shop) and Prithooa and Gooroobuksh and Beesram knew of money being in the house. Gooroobuksh is prosecutrix's son's wife's father. On the day of the dacoitee the prisoner Kandooa in the bazar threatened prosecutrix, saying he would rob her house. He had wanted to borrow money and was refused. Of the prisoners, Beesram and Prithooa live in the same village with prosecutrix, all the others live within a coss or a coss and a half. Prosecutrix was burned on various parts of her person. About

eight days before the robbery, the prisoner Goroobuksh had wished to borrow money and grain, but was refused.

Lalla Mohadeo Sahaie.

Lalla Jugdum Sahaie.

Lalla Juhair Lall.

"The jury, whose names are entered in the margin, find all the prisoners guilty of dacoitee with torture.

"I concur in this verdict. No doubt rests on the validity of the confessions of the prisoners, and they are supported by the finding of the property and recognition at the time of the dacoitee by witnesses. The evidence may be summed up thus.

"The prisoners Mugun, Jeetoo, and Ghunnoo confessed before the darogah and before the principal assistant, and each gave up sundry articles of the plundered property. The prisoner Kandooa confessed before the darogah and before the principal assistant; and prosecutrix states that previous to the dacoitee he threatened to rob her house. The prisoner Mohun confessed before the darogah, and gave up some of the plundered property. The prisoners Mitcoo and Dhunnoo confessed before the darogah, and gave up some of the stolen property. They were recognised by witnesses at the time of the robbery: these men are village watchmen.

"The prisoners Bohora and Beesram confessed before the darogah, and were recognised by witnesses at the time of robbery.

"The prisoners Prithooa and Goroobuksh were recognised by witnesses at the time of the robbery, and they have been named as concerned in the robbery by nearly all the confessing prisoners.

"I have arranged this summary in the order of cogency of proof. The two last named prisoners are therefore those against whom I consider the least weight of evidence has been found. The witnesses for the prisoner Goroobuksh in a measure substantiate his plea of *alibi*. Nevertheless, I think that the jury have rightly convicted these two prisoners. Goroobuksh is the prosecutrix's son's wife's father, and Prithooa is an old man. No motive for a malicious prosecution of the prisoners is discernible; and the tenor of the case shews that they were probably the instigators of the act, both being said to have been aware that there was money in the prosecutrix's house.

"I consider that 14 years' imprisonment, with labor in irons, would be a fitting sentence on all the prisoners; and this, as regards the term, is within my own competency. But the proof of torture having been used is clear and sufficient, therefore it seems necessary to refer the case for the final orders of the Sudder Court.

BY THE COURT.

MR. J. R. COLVIN.—"The period of punishment proposed appears to me sufficient. But I cannot concur in the conviction of all the prisoners.

1849.

December 22.

Case of MUGUN and others.

1849.

December 22.

Case of MUGUN and others.

"It is remarkable that the prosecutrix, in her first mofussil deposition of August 23rd, spoke only to the recognition by any party of two of the prisoners, Mugun and Ghunnoo, while, when the whole body of prisoners were at length sent in by the darogah with his report of September 4th, she named two persons as eye-witnesses against the six last of the prisoners in the calendar, (these two prisoners being said to have been sleeping in her house on the night of the dacoitee,) and herself also, on the trial, spoke to her own recognition of those six and *not* of the two abovenamed whom she had at first mentioned.

"The prisoners were further kept, as justly animadverted upon by the junior assistant agent, Mr. F. Tucker, in his roobukaree of September 10th, 1849, for a very improper length of time in the mofussil, and their confessions were, in many instances, taken several days after their apprehension.

"I cannot therefore place reliance either on the direct testimony of the eye-witnesses or on the alleged mofussil confessions.

"As far, but as far only, as the evidence consists of confession freely made before the principal assistant, and of corroboration of other statements by the proved finding of part of the stolen property, in the house of several of the prisoners, or in places where it had been secreted by them, I think that it will be safe and right to confirm the proposed sentence of conviction. And as there is proof of serious and painful, though not of dangerous, torture, I am of opinion that a punishment of considerable severity is required.

"Upon these grounds, I acquit the prisoners Bohora, Beesram, Prithooa, and Goroobuksh, and sentence the other seven prisoners to imprisonment for 14 years, with hard labor and irons."

GOVERNMENT

versus

JUGBUNDHOO SWAIE AND MEAH JAN KHAN.

CHARGE—CULPABLE HOMICIDE.

1849.

December 29.

A prison charged with culpable homicide acquitted on the ground that the circumstance of being present, when the beating which caused the death of the deceased was inflicted, was not sufficient evidence of criminal privity to the fact of which the *futwa* of the law officer found him guilty.

THE sessions judge of Cuttack, who tried the prisoners at the sessions for that district in November 1849, thus reported the circumstances of the case in his letter of reference to the Nizamut Adawlut :

"On the evening preceding the day on which the deceased Kishen Das was killed, an altercation took place between him and Sartuk Mullik, the joint lessee or farmer of mouzah Chuk-

raburn with Hureebullub Raot, because he objected to become security for Ruggo Punda, a defaulting ryut, which ended in Sartuk Mullik and the deceased assaulting one another; and Sartuk Mullik, Hureebullub Raot, and Ruggoo Punda went forthwith and complained to the tehseeldar, Rutnakur Mhaintee, who told them to bring the deceased to his cutcherry and beat him on the way; and as they were taking him there the following morning, Lokhaie Swaie told his son Jugbundhoo Swaie to realize one rupee *mecadee*, or the peadas' expenses, from the deceased, and on his refusing then to give it, and stating that, if the hakim, *i. e.* the tehseeldar, told him to pay it, he would do so, Jugbundhoo Swaie beat him, and he fell down dead on the road.

'The witnesses all depose to the beating on the part of Jugbundhoo Swaie the prisoner, and two witnesses state that Meah Jan Khan also beat him.

'The prisoner Jugbundhoo Swaie acknowledged, before the police and the magistrate, having beat the deceased with his hand, after which he proceeded a few paces and fell on the ground, and died, and he in like manner pleaded *guilty* before this court.

'Meah Jan Khan plead *not guilty* throughout.

'The *fitwa* of the law officer convicts the prisoners Jugbundhoo Swaie of the crime charged, and Meah Jan Khan of privity thereto; and fully concurring in the conviction of Jugbundhoo Swaie, I have sentenced him to imprisonment for three years from the 30th ultimo, and to pay a fine of 20 rupees in the course of one month, or, on default of payment, to labor until the fine is paid. But as I do not consider it satisfactorily proved that Meah Jan Khan assaulted the deceased, and it cannot be said that he concealed his knowledge of the occurrence, as he was apparently the first to communicate all the particulars attending the assault on the deceased to the police darogah, who forwarded him as a witness to the magistrate, I am of opinion that he should be acquitted and discharged.

"My reasons for distrusting the evidence of the witnesses who have deposed that Meah Jan Khan beat the deceased Kishen Das, are, 1st, that Ruttun Swaie is the uncle of the prisoner Jugbundhoo Swaie, and it is not at all improbable that he has accused Meah Jan Khan in order to diminish the culpability attaching to his nephew; 2ndly, because Bhobanee Pudhan was not one of the party with the prisoners and the deceased, but was engaged in his field as they were passing by quarrelling, and is consequently not likely to have distinctly observed who beat the deceased; and, 3rdly, because three witnesses, who were of the party proceeding to the tehseeldar's cutcherry, have deposed that they did not see Meah Jan Khan beat the deceased.

1849.

December 22.

Case of JUG-
BUNDHOO
SWAIE and
another.

1849.

BY THE COURT.

December 29.

Case of Jugg-
BUNDHOO
SWAIN and
another.

MR. J. DUNBAR.—“The sessions judge has evidently misapprehended the futwa of the law officer. He states that he does not consider it satisfactorily proved that Meah Jan Khan assaulted the deceased, and that it cannot be said that he concealed his knowledge of the occurrence, as he was apparently the first to make known the particulars to the darogah. He then goes on to give his reasons in detail, for distrusting the evidence of those witnesses who deposed that Meah Jan Khan had beaten the deceased. His arguments on both points, (the beating and concealment,) with reference to the wording of the futwa, are not to the point, as the law officer also distinctly declares that he disbelieves the evidence as to the beating, while he says nothing whatever about Meah Jan Khan's concealing what had happened. He convicts Meah Jan of privy before and after the fact, solely on the ground that he was present from the time that the deceased was brought away from his house till the time of his death. To this finding it was that the sessions judge should have stated his objections, if he had any to urge. As it is, I do not see that the mere circumstance of Meah Jan Khan's being present when Kishen Das was first called and when the beating was inflicted which caused his death, can be taken as evidence of criminal privy to the fact. He was only one of several persons who were present, each on his own business, to the tehseeldar's cutcherry. I accordingly acquit him, and direct his immediate release.”

CASE IN THE MIZAMUT ADALAT

Present:

H. T. BAKER, Esq., Judge.
J. H. PATON, Esq., Officiating Judge.

GOVERNMENT AND BHUKHTO KHANSAMAH

versus

BAHMA THAKUR ALIAS RAJNARAIN SURMAH.

Rungpore.

1854.

Charge, Charge.—1st count, burglary in the house of the prosecutor, Bhukhto Khansamah, and theft therefrom of property valued at Rs. 9, with assault on the witnesses, Buxoo, Nowcoursie and Brij Doss; 2nd count, receiving and having in his possession property knowing it to have been obtained by the said burglary.

November 3.

Case of
BAHMA THAKUR alias
RAJNARAIN
SURMAH.

CRIME ESTABLISHED.—Burglary in the house of the prosecutor and theft therefrom of property valued at Rs. 9, with assault on the witnesses, Buxoo, Nowcoursie and Brij Doss.

Committing Officer.—Mr H. L. Dampier, officiating magistrate of Rungpore.

The prisoner, an old offender, was convicted of burglary and theft, and sentenced to five years' imprisonment. Appeal refused.

Tried

sessions judge of

having heard from him then and there the statement by the three prisoners, Teelah Gaze (with which he was committed on a charge of burglary) which was with severe wounding of prisoner himself, was sentenced on the 18th November last, to five years' imprisonment with labour, which sentence was quashed by the Sudder Court for the reason given in the register's letter of the 3rd January 1854. No. 82. The prisoner having before been convicted of felony the magistrate was unable to dispose of the case himself and again committed him to the sessions on a charge of burglary with assault. Khola chowksedar, witness No. 3, hearing a noise near prosecutor's house, as he was going his rounds about midnight, called out, when two persons rushed past him whom he and some of the neighbours immediately followed. The prisoner after some scuffling, in which he himself was wounded, it does not very clearly appear how, and some of the witnesses received no great severity apparently, was apprehended and acknowledged that he and two others had committed the burglary in prosecutor's house and the property, which he had abstracted therefrom, was found in the hole, where he had thrown it on the chowksedar's giving the alarm. One of his companions had been seized by witness No. 1, but escaped and there was no evidence against the individuals implicated by prisoner. He confessed both in the mofussil and before the magistrate. The jury, Natarahundar Doss, Ramjadar Sein and Hurochunder Muxomdar, found him guilty on the 1st charge, excepting the



1854. assault. ~~the prisoner~~ charge proved. Although no charge of assault was made, ~~the prisoner~~ the prisoner was first committed, the witnesses had mentioned the circumstances, the violence was not great however, and it is not with reference to that, but to the prisoner's exceedingly bad character, he having been once before convicted of burglary and once imprisoned for six months as a bad character, that I sentenced him to five years' imprisonment with labor and irons from the date of his previous sentence, viz. the 18th November last.

November 3.
Case of
BADRA THAKUR
alias
RAJNARAIN
SURMAH.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The statements of the witnesses, and, such admissions as the prisoner has himself placed on record, are sufficient to prove his guilt and justify this conviction. We reject this appeal.

PRESENT:

H. T. RAIKES, Esq., *Judge*.
J. H. PATTON, Esq., *Officiating Judge*.

Tipperah. GOVERNMENT KATA GAZEE
mere circumstance of mean
when Kishen Das was first called and
1854. CHARME CHARGED.—1st count, assaulting and cutting off
November 3. Tehsinee's car; 2nd count, aiding and abetting in the above
Case of CHARGE
and DOWLUT GAZEE
ZEE.

IME ESTABLISHED.—Being accomplices in cutting off Toofanee's car.
Committing Officer.—Mr. F. B. Simson, officiating joint-magistrate of Noacolly.

Tried before Mr. H. C. Halkett, officiating sessions judge of Tipperah, on the 4th August, 1854.

Remarks by the officiating sessions judge.—The prisoners were charged with assaulting and cutting off the car of Toofanee, the brother of the prosecutor. The circumstances of this case, as detailed by the prosecutor, are as follows. The prisoner Keamuddy (acquitted) being suspected of having had a criminal connexion with his own mother-in-law, had been expelled from their society by Toofanee and some others, on which account he nourished a deep enmity against Toofanee. On the evening of the 9th of March, the prisoners meeting Toofanee near the dwelling of Dowlut and Charroo, seized him and dragging him forcibly inside, the prisoner Charroo (No. 1.) cut off his ear, and Dowlut (prisoner No. 2.) knocked out two of his front teeth by a blow of his fist. The prisoners Charroo (No. 1.) and Dowlut (No. 2.)

Two prisoners convicted of cutting off the ear of a man suspected of trying to intrigue with the wife of one of them, sentenced to three years' imprisonment.
Appeal rejected.

being both of them friends of Keamuddy (No. 3,) had joined him in committing the outrage.

In the mofussil as well as before the magistrate, the prisoners Charroo (No. 1,) and Dowlut (No. 2,) confessed having assaulted Toofanee and to have participated in the cruel action charged against them, each however stating that the other and not himself was the party who had actually cut off the unfortunate man's ear. The course alleged by both was, that Toofanee had been detected in company of Dowlut's wife.

Charroo (prisoner No. 1,) and Dowlut (No. 2,) it should be stated, are first cousins and inhabit the same *bdree*. Besides the actual sufferer himself, there are no witnesses to the fact.

At the sessions Dowlut (prisoner No. 2,) confessed to having cut off the ear of Toofanee, stating that he had caught him attempting his wife's person, and had in the anger of the moment inflicted this punishment upon him. Charroo (prisoner No. 1,) denied all participation in the offence, only stating that he had heard that Dowlut (No. 2,) had detected Toofanee in company with his wife, and had cut off his ear in revenge.

Three witnesses depose to having seen Toofanee coming out from the prisoner's dwelling, on the night of the occurrence, with his ear cut off and blood flowing from the wound, as well as to having heard from him then and there the details of the outrage inflicted by the three prisoners. Teelab Gazee (witness, No. 14,) the village chowkedar, also states that he saw Toofanee on the same evening lying in his own house with his ear cut off, and that he heard from him that the prisoners had seized him and cut off his ear. The actual proof in this case rests solely upon the confessions of the two prisoners Dowlut (No. 2,) and Charroo (No. 1,) which differ only to the extent that in each the one throws upon the other the blame of cutting off the ear of the man Toofanee, though at the sessions Dowlut (prisoner No. 2,) confessed that he was the party who maimed Toofanee. Be the truth, with reference to which party actually inflicted the wound, what it may, the fact of participation in this cruel and abominable outrage is clearly established against both. Neither does the reason alleged for committing the crime at all bear the stamp of probability. That the man Toofanee should, as alleged by the prisoners, have entered the house at the hour mentioned (7 or 8 in the evening) at a time when the husband, Dowlut, (prisoner No. 2,) must have been awake, for the purpose of having an intrigue with his wife, is utterly improbable. Nor is it attempted to be supported by any evidence.

In conformity with the opinion of the law officer, who held that participation in cutting off Toofanee's ear was made good against both prisoners, by violent presumption, as well as by the tenor of their several confessions, both here and in the mofussil, I sentenced them to imprisonment for three years, and to pay

1854.

November 3.

Case of
CHARROO
and
DOWLUT GA-
ZEE.

1854. a fine of twenty-five rupees, or in default of payment to hard labor until the expiration of the term of their sentence, or till the payment of the fine.

November 3. *Case of CHABBOO and DOWLUT GA.* *Remarks by the Nizamut Adawlut.*—(Present: Messrs. H. T. Raikes and J. H. Patton.) The prosecutor's statement is fully confirmed to this extent, by the admissions of the prisoners themselves, that they were the parties who cruelly maltreated him. Their plea that they took the prosecutor in the act of forcing the wife of the prisoner, Dowlut, is not borne out by evidence, nor have they called any witnesses to their defence. The fact of the prosecutor being near the house, with the intent of carrying on an intrigue with the wife of one of them, could be no justification of this barbarous treatment. We therefore reject the appeal.

PRESENT:

H. T. RAIKES, Esq., *Judge.*
J. H. PATTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

Rungpore.

DEODUT AND ZOHUREE DUFFADAR.

1854.

November 3.

Case of
DEODUT and
ZOHUREE
DUFFADAR.

CRIME CHARGED.—Culpable homicide of Pran Doss.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer.—Mr. H. L. Dampier, officiating magistrate of Rungpore.

Tried before Mr. G. U. Yule, officiating sessions judge of Rungpore, on the 17th June, 1854.

Remarks by the officiating sessions judge.—The prisoners, chupprassies attached to the G. T. Survey, were stationed at an outpost, they, and another released by the magistrate, were returning to their post after despatching a load of wood to the head-quarters at Titalya; on their return, they saw a hole in a paddy field with water in it, and a pot with a string tied to it lying near, they commenced baling out the water with the pot, in order to catch fish. Pran Doss, deceased, to whom the hole belonged, came out from his house, a short way off, accompanied by his grandson, witness No. 6, and forbid them; some sharp words passed, prisoner, No. 8, struck deceased with a cane stick, No. 9 hit him on the cheek with his hand and knocked him into the hole. This hole was about eight feet square with one and half or two feet of water in it, the surface of the water was about the same depth below the level of the ground, and a small bund of the earth thrown out rose about the same height

Two prisoners, chupprassies, attached to the G. T. Survey, convicted of the culpable homicide of a man, in whose pool of water they had tried to catch fish, and sentenced to seven years' imprisonment. Appeal rejected.

and the edge. Deceased was very soon after being knocked in taken out by prisoners and their companion, and was either dead, when taken out, or died immediately on being taken out. The question is, how he died. Witness, No. 1, who was nearer to the spot than any other witnesses, states that after being knocked into the hole, on which point all the witnesses agree (Nos. 1, 2, 3, 4, 5 and 6,) the deceased was kept down in the water by prisoners, Nos. 8 and 9, who poked him with their canes, when he rose, and that he was so kept for one *ghuree*, prisoners not moving from their position on the edge, they then took him out dead; before the magistrate, he said he was six fields (*kittas*) off, here he says he was ten or twelve feet (*haths*.) near enough to see the surface of the water, he explains that the fields were very small, he also denies stating before the magistrate that prisoners used their feet to keep down deceased, or that deceased vomited on being brought out of the water.

Witness, No. 2, was about two beegahs off, somewhat further than No. 1, whose evidence he confirms with this difference that on seeing deceased knocked into the hole, he ran up, stopping for an instant to drive back his cattle, which were also going towards it, and that on getting to the hole, prisoners had taken deceased dead, out of the water; in running up, he saw them holding deceased down in the water with their canes, they did not descend into the water themselves.

Witness, No. 3, was also about two beegahs off, ran up almost immediately on seeing deceased knocked into the hole, saw, as he was running, prisoner No. 9, holding deceased down in the water with his cane, as he came up, prisoners took deceased out, who died, he says, at one time in the water, at another out of it, his body quivering as it was raised; witness No. 1 arrived at the hole one *ghuree* before him, a phrase which explains that witness's assertion of deceased having been kept in the water one *ghuree* by prisoners, in fact the witnesses were the most stupid fellows I almost ever saw, they had no distinct idea of time or distance, and it was extremely difficult to make them comprehend the simplest question. Before the magistrate, this witness stated at one time that prisoner, No. 9, alone pushed deceased down in the water, at another that both prisoners did so.

Witness, No. 4, was about ten fields (*kittas*) off, witnesses, Nos. 1, 2, 3 and 5, arrived before him at the hole, saw prisoner, No. 8 strike deceased with cane, and No. 9 slap him on the face, and knock him into the hole, did not see them keep him down in the water.

Witness, No. 5, was about one *rushee* off, but points out from the cutcherry, a distance of one hundred or one hundred and twenty-five yards to show what he means, saw prisoners strike

1854.

November 3.

Case of
DEODUT and
ZOHUREE
DUFFADAR.

1854. and knock deceased into the hole, and keep him down, as he, witness, was running up, when he arrived, they had pulled him out.

November 3.

Case of
DEODUT and
ZOHURREE
DUFFADAR.

Witness, No. 6, a boy of seven or eight years old, grandson of deceased, accompanied deceased to the hole, when he went to stop prisoner from fishing there, he corroborates the story told by the preceding witnesses; but being quite unable to understand the import of an oath, I lay no stress on his evidence. The above witnesses declare that deceased was not subject to fits, and had no disease at the time.

Witnesses, Nos. 7, 8, 9 and 10, are witnesses to the *sooruthal*, and also witness, No. 11, the civil assistant surgeon, who was unable to examine the body from the state of decomposition it was in; witness, No. 12, wife of deceased, states that her husband after eating, went to stop some persons from catching his fish, and she soon after heard he was dead.

Witness, No. 13, Mr. Berrill, assistant surveyor, heard when at Titalya of the occurrence first from a khalashee, who gave prisoner's version, and secondly from a zemindar in the neighbourhood of deceased's village, who gave pretty nearly the version of the witnesses above noted, went to the spot the same afternoon, saw the body near the hole, which he describes and thinks it impossible for a man to be drowned in it by two others holding him down with the canes produced in court, which the chowkeedar of the village had taken possession of. A man and boy told him that deceased had died as above related, the other villagers did not know, and the prisoners told the story hereafter given by them in their defence.

Witness, No. 14, Munnoolal, a native doctor attached to the survey, accompanied the last witnesses, examined the body and saw no marks on it, deceased's wife said that her husband hearing some people were catching his fish, went out to stop them, and shortly afterwards, she heard of his death, a man and boy stated that deceased had met his death as above related.

Prisoners state that they were returning to their post, when they began to empty the water out of Pran Doss's hole as above mentioned, that they stopped on being remonstrated with, by deceased, who then went home, brought a net and began to catch fish for them, that observing he remained sometime under water, they became alarmed and pulled him out, and that he died immediately after. They named one witness at the foud-darry, the party released by the magistrate, who was not present when called for, and the prisoners not requiring his deposition as necessary, I did not postpone the trial for his appearance.

It is clear that prisoners knocked deceased into the hole and that he was taken out dead or dying; if the statement of the witnesses and particularly No. 1, is true that prisoners kept deceased down in the water for sometime, the case would be one

of murder not of culpable homicide, but from the evidence of the other witnesses, who at a distance, not exceeding one hundred and fifty yards, began to run up when they saw deceased knocked down, and found, on reaching the hole, that he was brought out of it by the prisoners themselves, I think it impossible that death could have been caused by drowning in such a short period, and that it must have occurred from the bursting of a blood-vessel or the spleen, either from the shock of the two blows given from the fall into the hole or from the pokes of the canes applied to deceased by prisoners, when he tumbled into the hole, which pokes, I think, appeared to the witnesses to be a pushing down of the deceased under the water.

The law officer convicts the prisoners of culpable homicide and liable to punishment by *decut* or *akoobut*; he mentions in his *futwa* that the evidence would have supported a charge of murder, but on this point I do not agree with him, the prisoners had no intention of killing deceased, and I do not think the evidence proved that they tried to keep him under water; they were however engaged in an illegal act, and when remonstrated with by deceased for attempting to take away his property, they attacked and assaulted him, in which assault he met his death, I therefore sentence the prisoners to seven years' with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The defence set up by the prisoners does not account for the death. It is impossible to conceive how the deceased could have been accidentally drowned, as asserted, in a small pool of water (said to be only two feet deep) with such assistance at hand as the prisoners affirm they were ready to give, and readily afforded. In the absence, therefore, of all other reason to account for the man's death, and seeing no apparent cause for malice or untruthfulness on the part of the eye-witnesses, we must accept their statements to the extent allowed by the sessions judge on the trial, and uphold his conviction on the charge against the prisoners.

1854.

November 3.

Case of
DEODUT and
ZOHUREE
DUFFADAR.

PRESENT:

H. T. RAIKES, Esq., *Judge.*
J. H. PATTON, Esq., *Officiating Judge.*

GOVERNMENT AND MUSST. NYOOREE

versus

Tipperah.

RAMJOY JALEA.

1854.

November 3.

Case of
RAMJOY
JALEA.

Prisoner convicted of the culpable homicide of his brother's widow whom he suddenly found speaking to a man of whom he was jealous, sentenced to four years' imprisonment. Appeal rejected.

CRIME CHARGED.—Wilful murder of prosecutrix's daughter, Musst. Toofanee.

CRIME ESTABLISHED.—Culpable homicide of Musst. Toofanee, daughter of the prosecutrix.

Committing Officer.—Mr. F. B. Simson, officiating joint-magistrate of Noacolly.

Tried before Mr. H. C. Halkett, officiating sessions judge of Tipperah, on the 14th August, 1854.

Remarks by the officiating sessions judge.—The deceased woman, Toofanee, was the wife of the prisoner's brother, who died about three years since. It appears that she had cohabited with the prisoner since his brother's death, living with him in the same house.

On the 24th of May last, the woman having gone down to the *ghat* to wash some household utensils, entered into conversation, when there, with a man named, Ramnarain Jalea, with regard to whom, it seems, the prisoner had entertained some jealousy, and had forbidden the deceased to speak to him at all. The prisoner suddenly coming up and finding her in conversation with this man, in the anger of the moment, struck her two slaps, and gave her a violent kick with his foot under the breast. The woman fell immediately and the prisoner went away without further noticing her. Five witnesses, who were standing near and saw the whole transaction, raised the unfortunate woman from the ground and conveyed her to her house, which was close by, when they found that she was quite dead.

In the mofussil and before the magistrate, the prisoner confessed having struck the woman two blows, but said nothing of having inflicted the kick, which unquestionably put an end to her existence.

At the sessions, he pleaded not guilty, denied altogether having struck the deceased, saying that she died of illness.

The plea of the prisoner is in this case totally unavailing. Not only is the fact of his having kicked the deceased, in the manner above detailed, fully proved by unquestionable evidence of several witnesses, who saw the whole, but his averment as to her having died from disease is totally unsupported. Of the six witnesses, whom he named to prove the fact, one man declared his total

ignorance of the deceased having laboured under sickness, and the prisoner on hearing this deposition, declined calling any other witness.

The law officer declared the prisoner guilty of culpable homicide, with which opinion I entirely concurred, and sentenced him to be imprisoned for four years, and to pay a fine of twenty-five rupees within twenty-five days, otherwise to labour until the expiry of his term of sentence, or until payment of the fine.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The prisoner in appeal reiterates his plea that the woman died a natural death, and alleges that the witnesses, who gave evidence against him, were at enmity with him. The woman's death is attributed by the witnesses to the violence they witnessed on the part of the prisoner, and of that fact there seems to be no room for doubt. At the trial moreover the prisoner failed altogether to establish aught in his defence. We see no reason therefore to interfere with the sentence passed upon him.

1854.

November 3.

Case of
RAMJOY
JALEA.

PRESENT:

H. T. RAIKES, Esq., *Judge.*

J. H. PATTON, Esq., *Officiating Judge.*

GOVERNMENT,

versus

NURSING PANDEY (No. 2.) AMEER TEWAREE (No. 3.)
DAHAREE (No. 4.) RADHAY (No. 5.) BHOWANY
DIAL (No. 6.) GENDA SAHOO (No. 7.) AND GUNGA-
PERSHAD (No. 8.)

Sarun.

1854.

CRIME CHARGED.—Nos. 2 and 3, knowingly uttering a forged document (*tumusook*) and Nos. 4 to 8, being accomplices in the above.

November 3.

CRIME ESTABLISHED.—Being accomplices in the crime charged.

Case of
NURSING
PANDEY and
others.

Committing Officer—Mr. R. J. Richardson, magistrate of Sarun.

Tried before Mr. Henry Atherton, officiating sessions judge of Sarun, on the 24th July, 1854.

Remarks by the officiating sessions judge.—This is a case of unsuccessful attempt to register a forged bond. On the morning of the 15th June, the defendants, seven in number, went to the registry office with the bond, delivered with a petition to the register, Dr. Fleming, by defendants Nos. 2 and 3, says the registry moonshee; the other witnesses, two chuprasses, being

Held that parties uttering a forged deed before a Registrar of deeds cannot be sent by that officer to the civil judge to be made over to

1954.

November 3.

Case of
NURSING
PANDEY and
others.

the magistrate,
there being no
case pending
as required by
Act I. 1848.
The parties ag-
grieved by the
forgery should
institute a pro-
secution before
the magistrate.

unable to state who presented it. According to this document, Daharee, defendant No. 4, had advanced 95 Rs. to Gunnoo and Jugput [represented by defendants Nos. 2 and 3, Nursing and Ameer,] identified by defendant, No. 5, who was examined under Act V. of 1840. The defendants Nos. 2 and 3 stated that they had executed the deed and received the money; but when asked if they could write, they admitted they could not. This excited suspicion, as the bond was signed by Gunnoo for himself and Jugput. Daharee, defendant No. 4, then stated in answer to a question put to him that Jugput had signed the bond; and on this, defendants Nos. 5, 6 and 8 seeing that the fraud was discovered, ran away from the office, but were pursued by the chuprassees, brought back again, and were then sent by the Register to me, as civil judge, and afterwards made over by me under Act I. of 1848 to the magistrate, by whom they have been committed for trial. Defendants Nos. 6, 7 and 8 were not questioned at the registry office, but went with the rest to have the deed registered, and were thus accomplices in uttering the deed; and that the bond is a forged document cannot for a moment be doubted, for the two parties in whose name the deed is executed were at the station on the morning in question, and attended at my office shortly after the defendants reached it. These live in the town of Chuprah, close to Gungapershad, defendant No. 8, and between the two families there have been feuds for the last three generations; and this is the way in which Gungapershad has attempted to pay them off, for there is no doubt that he is at the bottom of the plot. Had Gunnoo and Jugput actually borrowed the money of Daharee, they would have attended themselves at the registry office, there being no possible reason why, being at the station, they should send two others to personate them. Of the defendants, Nursing No. 2 admits having played his part at the instigation of Gungapershad, defendant No. 8. Defendant No. 3 has no defence to offer in my court; that first of all made being that he and Nursing had personated Gunnoo and Jugput at their own request, as they said they had no time on the morning in question to attend at the registry office. Defendant No. 4 says that he advanced the money to Gunnoo and Jugput, but he admits that the bond was not written at the time, and says that he went to the registry office with defendants Nos. 2 and 3, who undertook to personate Gunnoo and Jugput,—Radhay identifying them, and defendant No 7 also accompanying them. Defendant No. 5 says he became a witness to the bond at the request of Gunnoo, who said he had received the money from Daharee, and he admits having identified defendants Nos. 2 and 3, as Gunnoo and Jugput, by Gunnoo's desire. Defendant No. 6 admits having written the bond produced in court, but says the money was not paid before him, and that the following morning he met

1854.

November 3.

Case of
NURSING
PANDEY and
others.

Gungapershad on the road near the Register's, when he was seized by the chuprassees and taken to the office, where he discovered, not Gunnoo and Jugput who had really borrowed the money, but defendants Nos. 2 and 3, who had personated them. This defendant has no witness to call in defence. Defendant No. 7, Genda, says he became witness to the bond at the request of Gunnoo and Jugput, who said they had got the money, and that next morning two men called at his house, when he was absent, and left directions for him to go to the Register's which he accordingly did, and there to his surprise found, not the two who had borrowed the money, but defendants Nos. 2 and 3, who had come instead. The defence of Gungapershad is, that he happened to be on the road opposite the Register's house, when he saw Radhay No. 5, followed by the chuprassees, and that on his asking what was the matter, he was himself seized and carried to the Register. This account is supported by the evidence of eight witnesses, but no reliance whatever can be placed on their testimony, as Gungapershad declines examining the Register himself, whom I offered to send for, if he wished it. Had he not gone with the party, the Register would not have committed him. The witnesses may have seen him seized by the chuprassees, for he was caught by them after he had run away from the office with Radhay and Bhowany Dial, but their statement that he was seized in consequence of enquiring about Radhay is manifestly false. The Moulvee holds the bond to be a forged document, and that the defendants are all guilty of being accomplices in the crime of knowingly uttering the forged bond. Radhay No. 5, is also separately charged and convicted of perjury, and his sentence of seven years' imprisonment, with labor in irons, is recorded in that case. The prisoners are sentenced as above. Genda being imprisoned for five years as he is an elderly man. In every case of this sort, the severest punishment is absolutely necessary, for the crime established in this case is one of the gravest that can be committed against society. Men may protect themselves against open violence, but it is hardly possible to guard against villains who prepare forged documents, and then make the judges of the land their instruments of oppression. There can be no doubt for the particulars detailed by Gunnoo and Jugput, but that Gungapershad has sought to punish them, his enemies, by forging a bond in their names, and had he been a little more careful he might have succeeded. Not one case, in one thousand, I believe, of this sort is successfully prosecuted; and it is proper that when conviction does ensue, the punishment should be calculated to deter others from the crime.

Sentence passed by the lower court.—Nos. 2, 3, 4, 6 and 8, each to be imprisoned with labor in irons for seven (7) years from the 24th July 1854, and No. 7 to be imprisoned with

1854. labor in irons for five (5) years. For the sentence on the prisoner No. 5 see the following case.
 November 3. *Remarks by the Nizamut Adawlut.*—(Present: Messrs. H. T. Raikes, and J. Dunbar.)
 Case of *Mr. H. T. Raikes.*—This prosecution for forgery has been
 NURSING originated by the civil judge, under circumstances which give
 PANDEY and others. him no jurisdiction in the matter.

The parties or some of them appeared before the Register of deeds to register a document, which, from circumstances occurring before him, the Register suspected to be a forgery, and forwarded the suspected parties and the document to the zillah judge.

The judge, concurring in these suspicions, drew up a proceeding addressed to the magistrate, and quoting Act I. of 1848 as his authority, directed the magistrate to try the parties accused on a charge of forgery, and to commit them for trial if the charge was proved. This, the magistrate did, and the trial at the sessions resulted in the conviction of the prisoners now before us.

I hold that the judge was wrong in issuing the orders he did, and that he could not legally initiate these proceedings against the prisoners.

The suspicious document in question had not been offered in evidence in a case pending before his court, it was not therefore subject to his judicial cognizance, and he had consequently no authority under Act I. of 1848 to direct the magistrate to take up and proceed with such a charge against the prisoners. As the proceedings of the magistrate have clearly originated in the illegal orders of the judge, I would quash the trial as irregular, and direct the release of the prisoners, leaving the injured party to institute a prosecution in the usual way before the criminal authorities.

Mr. J. Dunbar.—I concur with Mr. Raikes that the judge had no jurisdiction under Act I. of 1848. That enactment is clearly not applicable to the case; but I do not see that the misapprehension of the judge in this particular should vitiate the commitment. The parties intended to be injured by the registration of the spurious document were (however brought there) before the magistrate, and anxious to have justice done, and I do not see how he could have thrown the case out, as it was not one of those which he could decline to receive under the provisions of Act I. of 1848, having no reference to a document filed as evidence by a party in a case pending before any court.

Messrs. J. Dunbar and H. T. Raikes.—As we are at variance on a point of law, and it is one of importance, we think the legal question had better be referred to the Court at large, and that counsel be heard as there are *vakeels* on both sides.

FULL BENCH.

1854.

25th October, 1854.

Murhumut Hosein for the prisoners.—Certain parties took a bond to be registered by the Register; that officer, considering the deed a forgery, sent them up to the judge, who in his civil capacity took the depositions of those whose names were forged and forwarded the proceedings dated 17th June, 1854, to the magistrate under Section 2, Act I. 1848, for enquiry.

November 3.

Case of
NURSING
PANDEY and
others.

The whole of this is irregular; and the proceedings are void *ab initio*. The law quoted by the judge is inapplicable, no case was *pendente lite*.

Argument for the prosecution.—Sumboonath Pundit relies on Clause 2, Section 14, Regulation XVII. 1817, and Construction 611, the perjury was dependent on proof of forgery, the judge was bound by the above law to send the case on to the magistrate, who was directed to commit on any charge he might think proper. The magistrate has made no mention of Act I. 1848 in his *roobukaree* of commitment.

Rampershad Roy in support.—Forgery is considered a heinous offence by Regulation IX. 1807. The magistrate could, of his own authority, take cognizance of this case, all the proceedings of the Register and the judge being set aside; and the judge directed that any charge which the magistrate thought proper might be preferred against the prisoners. If the magistrate has this authority, the permission of the judge is so much surplussage and of no force.

The magistrate, on receipt of the judge's *roobukaree*, ordered the deposition of the plaintiff to be taken, but did not know on what charge he was going to commit the prisoners. Subsequently, in his commitment, he acted on his own responsibility, and made Government prosecutor and the aggrieved parties witnesses.

Argument for the defence, Murhumut Hosein contra.—The magistrate was first aware of the charge of forgery through the judge's *roobukaree*, and his proceedings were consequent on receipt of it, which ordered the prisoners' commitment on a charge of forgery, &c., at the discretion of the magistrate. This is not similar to a public offence, such as dacoity or affray, &c. Forgeries may be committed in private, and the offence must be brought forward to the notice of the criminal court.

Mr. A. Dick.—It has been ruled that a Register can send up to the judge a case of perjury committed before him. Such a case was before the judge, and the forged document in question was adduced in evidence. There was therefore a case legally pending before the judge, and the document adjudged to be forged was offered in evidence; for without it the perjury could not have been established. The law, Act I. of 1848, has the word *case*, and not *suit*. I am therefore of opinion that the judge was authorized to send the charge under section 2, Act

1854.

November 3.

Case of
NURSING
PANDEY and
others.

I. 1848, to the magistrate for investigation. If the judge could not send the charge to the magistrate because no *civil suit* was pending before him, then the commitment of the prisoner for forgery by the magistrate was illegal. There was no complaint or charge preferred on oath to him. This is prescribed in Section V. Regulation IX. 1793, and Sections 3, and 4, Regulation IX. 1807. In no other mode is a magistrate authorized to take cognizance of crimes, except when being perpetrated.

Sir R. Barlow, Bart.—There can be no doubt that the judge brought the forgery, which he considered to have been committed, to the notice of the magistrate in his *roobukarree*, and at the same time sent the parties over to the foudjary court. (See statement No. 6.) The magistrate on the receipt of this proceeding, which the judge states he founded on the provisions of Act I. of 1848, ordered that the enquiry should commence. Previous to this the magistrate had no knowledge of the case; but in furtherance of the investigation which the judge had already made, the magistrate took the *evidence* of the party whose name it was alleged had been forged, no *application* or petition on his part for an enquiry having been preferred in the foudjary court.

No case was pending in the civil court. The signature alleged to have been forged was not offered in evidence in that court. The judge could not, therefore, under the law upon which he relied, initiate a criminal investigation and refer the matter to the magistrate. The proceedings are therefore void *ab initio*, and the indictment "uttering a forged document knowing it to be such" cannot stand.

Mr. J. H. Patton.—I concur with Sir Robert Barlow.

Mr. H. T. Raikes.—Sir R. Barlow and Mr. J. H. Patton having concurred in the view of the law taken by me, I would only remark that the Court at large, on the 10th of June 1853, on a reference from the additional judge of Chittagong, ruled unanimously that "the provisions of Act I. of 1848, are confined to *cases* before the *civil and criminal courts*.—In the present state of the law, therefore, prosecutions for forgery committed before a Register of deeds can be instituted before the magistrate, in the same manner as for any other forgery not committed before a civil or criminal court on the information on oath or solemn affirmation of any one." This applies to the case now before us; and had the judge of Sarun acted in conformity with the provisions and intent of the Act referred to, he would have left the aggrieved parties to proceed against the accused in the usual course here pointed out namely by information on oath, &c.

As to the course now to be pursued in disposing of the case before us, it appears to me, that in conformity with the prac-

* Case of Sookhun Lall. p 1124,
of Nizamut Reports for 1851.
Case of Luckenath Bhattacharj,
p. 1666 of ditto for ditto.

tice of the Court in the cases
noted in the margin,* the pro-
ceedings must be quashed, and
the parties competent to bring
forward charges of this nature

1854.

November 3.
Case of
NURSING
PANDEY and
others.

left to exercise their own discretion as to commencing proceed-
ings in the foudjary court.

Mr. B. J. Colvin.—I am of opinion that the judge had no
jurisdiction under Act I. 1848, for no case was pending before
him as contemplated by that law. He was therefore in
error in citing that law when he sent the parties to the magis-
trate. His proper course was to inform the party, attempted
to be injured by the accused, that he was at liberty to prefer
the charge of forgery against them before the magistrate. It
remains to be considered whether what the judge did vitiates
the proceedings. I do not consider that it does, for it did not
bind the magistrate in any way, and it amounted to nothing
more than officially bringing to the magistrate's notice the
allegation of forgery for him to deal with the case as he saw
proper. It is of course presumed that the injured party wished
to have the accused brought to justice.

Messrs. H. T. Raikes and J. H. Patton.—A majority of the
Court having determined that the trial of the prisoners on a
charge of forgery, in conformity with the orders of the civil
judge passed in a case, not pending before his court, is irregular,
we quash the proceedings held in this case, and direct the
release of the prisoners.

The parties, considering themselves aggrieved by the alleged
fraudulent acts of any of the parties concerned, are of course at
liberty to commence proceedings against them in the foudjarry
court in the usual course.

PRESENT :

H. T. RAIKES, Esq., *Judge.*
J. H. PATTON, Esq., *Officiating Judge.*

Sarun.

1854.

GOVERNMENT

versus

RADHAY.

November 3.
Case of
RADHAY.

CRIME CHARGED.—Perjury, in having on the 15th June,
1854, corresponding with 5th Assar 1261, F. S., deposed under
a solemn declaration, taken instead of an oath, before the Regis-
ter of deeds of zillah Sarun, that Nursing Pandey and Ameer
Tewaree were Gunnoo and Jugput Tewaree, respectively, and
A prisoner charged with perjury before the Register of
deeds should be sent by that

1854.

November 3.

Case of
RADHAY.

officer to the
civil judge who
is competent
to commit him
to the ses-
sions.

that they were the persons whose names were entered in a document (to the attesting of which he had been summoned as a witness,) such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—The same as crime charged.

Committing Officer.—Mr. R. J. Richardson, magistrate of Sarun.

Tried before Mr. Henry Atherton, officiating sessions judge of Sarun, on the 24th July, 1854.

Remarks by the officiating sessions judge.—The evidence of the witnesses, Nos. 1, 2 and 3, convicts the prisoner of the crime charged, which is admitted by the prisoner himself. The moult-vee finds him guilty, and as he has been in the other case No. 3, convicted as an accomplice in the crime of knowingly uttering a forged bond, I sentence him as above.

Sentence passed by the lower court.—To be imprisoned in this and the preceding case with labor in irons for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The prisoner has been convicted by the judge of perjury before the Register of deeds. A crime of this nature, believed to have been committed before a Register of deeds, is cognizable by the civil judge of the district under Clause 2, Section 14, Regulation XVII. of 1817, who is empowered to commit the accused for trial at the sessions court.

In the present case, there have been no proceedings held by the judge regarding the alleged perjury; the prisoner and others were forwarded to the magistrate with a *roobacaree* from the judge, stating that he transmitted them to the foudjary court under Act I. of 1848, in the belief that they were all concerned in a forgery brought to light before the Register of deeds.

The magistrate, in accordance with the instructions of the judge, committed the prisoner and others on a charge of *forgery* (as detailed in the remarks on the trial of Nursing Pandey and others disposed of to-day,) and charged the prisoner in a separate calendar with perjury also. On that charge the sessions judge convicted the prisoner, and in addition to the sentence passed on him for forgery has imprisoned him for two years in the present case. As the magistrate had no authority to originate a charge of perjury, alleged to have been committed before another court, the commitment and trial of this man are quite illegal, and the prisoner must be released.

PRESENT:

H. T. RAIKES, Esq., *Judge*.
J. H. PATTON, Esq., *Officiating Judge*.

GOVERNMENT AND SUFFEE MAHOMED

versus

ATA.

Rungpore.

1854.

November 3.

Case of
ATA.

CRIME CHARGED.—1st count, burglary in the house of the prosecutor Suffee Mahomed and theft therefrom of property valued at Rs. 7-10, belonging to the said Suffee Mahomed; 2nd count, receiving and having in his possession property, knowing the same to have been obtained by the said burglary.

CRIME ESTABLISHED.—Receiving and having in his possession property, knowing the same to have been obtained by burglary.

Committing Officer.—Mr. H. L. Dampier, officiating magistrate of Rungpore.

Tried before Mr. G. U. Yule, officiating sessions judge of Rungpore, on the 30th May, 1854.

Remarks by the officiating sessions judge.—Suffee Mahomed hearing a noise at night, got up and found his house had been burglariously entered, and a number of brass utensils carried off, he suspected Ata, a bad character in his neighbourhood, of being concerned and having had his premises searched by the police, two brass *thalacs* proved to be the property of prosecutor, were found in the ash-heap close out-side the house. In the house of Haree and Dawye, near relations of prisoner, a *lota* and cup belonging to prosecutor in this case and a *degchee* to prosecutor in case No. 2, of statement No. 8, were found, and it was proved by Belaitce, wife of Dawye (who had been acquitted by the magistrate) that these articles had been deposited in her house, in spite of her opposition, by Maudai, the mother-in-law of Ata, just as the police had approached Ata's house for the purpose of searching it, this fact she communicated to the jemadar and villagers when the property was found in her house, and I gave full credence to the truth of her statement; Ata has before undergone two years' imprisonment for burglary, and bore a very bad character among his neighbours. On these grounds the law officer found him guilty, on violent presumption, of the 2nd count of the charge and agreeing with him, I sentenced the prisoner as mentioned.

Sentence passed by the lower court.—Imprisonment with labor and irons for five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The alleged proof against the

Prisoner convicted by the sessions judge of receiving stolen property acquitted in appeal, the place where the property was found being accessible to any one, the search the prisoner's house having been made in his absence.

1854.
November 3.
Case of
ATA.

prisoner is the discovery of property in an ash-heap near his house. The sessions judge moreover remarks that he places full confidence in the statement of a woman named "Belaitee," (the wife of another person accused) that some articles of property found in her husband's house were placed there by the prisoner's mother-in-law. These are the grounds of conviction. We find however that the ash-heap alluded to was situated outside the prisoner's house and must have been accessible to any one, and that the search of the prisoner's premises was made in his absence. A presumption of guilt deduced from the finding of property, said to be discovered under such circumstances, is too doubtful to be relied upon. As to the statement of the woman Belaitee, we observe that the articles she alludes to were found in different rooms concealed under straw, and the fact of these having been so concealed by the prisoner's mother-in-law was deemed by the magistrate too improbable to make use of her evidence, on the part of the prosecution. She was therefore not produced as a witness against the prisoner on the trial, but appeared as a witness in support of the *defence* of the prisoner Haree released. Under these circumstances, the sessions judge was not justified in considering her evidence in the light of proving the guilt of the prisoner. We have therefore entirely discarded it and considering, as remarked above, that the discovery of the property in the ash-heap is insufficient to support the conviction, deem the prisoner entitled to his acquittal. Ordered accordingly.

PRESENT :

SIR R. BARLOW, BART., AND B. J. COLVIN, Esq., *Judges*.

GOVERNMENT AND OTHERS

versus

Sarun. GOODREE (No. 4.) AND ABLACK (No. 5.)

1854.
November 4.
Case of
GOODREE
and ABLACK.

CRIME CHARGED.—No. 4, culpable homicide of Lowtoo Chamar and Must. Foolguria his daughter aged eight years. No. 5 aiding and abetting in the same.

CRIME ESTABLISHED.—No. 4, culpable homicide of Lowtoo Chamar, and No. 5 aiding and abetting in the above.

Committing Officer.—Mr. W. F. McDonell, joint-magistrate for the deputy magistrate of Sewan.

Tried before Mr. H. Atherton, officiating sessions judge of Sarun, on the 21st August, 1854.

Remarks by the officiating sessions judge.—This is a singular case of homicide. The prisoners went on the 6th July to Low-

The prisoners' appeal was rejected.

1854.

November 4.

CASE OF
GOODREE AND
ABLACK.

too's house to press him as a "*begar*." He had at the time some tobacco in his hand, and was about to prepare his *hookha*, which his daughter, a child eight years of age, held close to him. On their telling him to come along with them he said he would after he had his *hookha*, and this not satisfying them, Goodree commenced grossly abusing him. The deceased answered very temperately, but still not preparing to leave his home, Ablack, armed with an iron-bound *lattee*, beat and seized him, on which Goodree, a tall powerful man, gave him a violent dig in the ribs with a long heavy *lattee* he held in his hand. The blow knocked him down over his child, whose neck is said to have been twisted, and who was from that time, till early the following morning insensible, when she expired. Lowtoo was carried inside by his wife and brother, the prosecutor, and afterwards aided by them went to the ticcadar of the village to complain. Returning home he was ill all night, vomiting violently after drinking water, and he expired next day at 12 o'clock. The bodies were then taken to the thannah near the village, and afterwards sent into this station, where they were examined by the civil surgeon Dr. Fleming on the 8th. From the heat of the weather, the bodies were swollen from decay, and bore no marks of injury whatever. The healthy state of the viscera led the civil surgeon to suppose that death might have been caused by some narcotic poison, but he allows that the contents of the stomach might present the same appearance, though no poison had been administered. The witnesses to the *sooruthal* state that when they saw the bodies at the thannah, they observed slight marks on the part where the butt-end of the bamboo touched the body of Lowtoo, and there is no reason whatever for doubting the evidence of the witnesses for the prosecution, five in number, who saw the prisoners act as I have described, and this evidence is confirmed by the account given by the prisoners themselves, both admitting that they went for Lowtoo and others to do some work for the putwaree. Goodree says that he refused to accompany him and went away to plough. Ablack stating that on his refusal, abuse passed between them when Goodree used his *lattee*, as described by the witnesses for the prosecution. The prisoners have no evidence to clear them. All of the place appear to have heard and to believe that the deceased Lowtoo and his child came by their death as explained. The death of the child was accidental, but the prisoners are guilty as charged in regard to Lowtoo, in the opinion of the moulvee and myself, and are accordingly sentenced as above, the violence used being altogether unprovoked, and the prisoners having gone to seize the deceased illegally.

Sentence passed by the lower court.—No. 4 to be imprisoned with labor in irons for seven (7) years from the 21st August, 1854, and No. 5 to be ditto ditto, without irons for four (4)

1854. years from ditto ditto, and to pay a fine of one hundred rupees on or before the 20th September next, or in default of payment to labor until the fine be paid or the term of sentence expire.
- November 4. *Case of GOODREE and ABLACK.* *Remarks by the Nizamut Adawlut.*—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) The case for the prosecution is supported by the answers of the prisoners, especially before the magistrate. Seeing no reason for interference with the finding and sentence, we reject the appeal.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, Esq., *Judges.*

GOVERNMENT AND BHUBEE CHURN ROY,

versus

DOOR.

Surun.

1854. CRIME CHARGED.—Culpable homicide of Suntoke Roy.
- CRIME ESTABLISHED.—The same as crime charged.
- November 4. Committing Officer.—Mr. W. F. McDonell, joint-magistrate for the deputy magistrate of Sewan with full powers of a magistrate.
- Case of DOOR.

Tried before Mr. Henry Atherton, officiating sessions judge of Surun, on the 17th August, 1854.

Remarks by the officiating sessions judge.—The prisoner in this case, though not charged with theft as he might have been, went, on the night of the 26th June last with his two brothers Gopee and Surun, who have absconded, to steal mangoes in the tope belonging to Puhul Roy one of the maliks of Seontha, close to which the prisoner lives. The deceased with witnesses Nos. 1 and 2 were on watch and warned them off. Abuse passed between the parties, on which the prisoner attacked the deceased and dealt him a blow on the head with his iron-bound *lattee*, which knocked him down and caused instant death. He was seized by Hullee, witness No. 2, but being aided by his brothers escaped at the time, though not till all three had been recognised, for though the night was dark the prisoner and his brothers were well known to the witnesses who were close them. The crime was reported the following morning to the darogah, the prisoner being named as the party by whom the deceased met with his death, and the charge is fully proved by the witnesses Nos. 1 and 2, whose evidence there is no reason at all to doubt, for though the prisoner denies the charge, and says he was at home on the night in question, such absence is not attempted to be established. Of the witnesses produced on prisoner's part, some merely state that the prisoner is a good

man, and that enmity has existed for the past two years between the Seontha maliks and the prisoner and his brother, while others know nothing of the case, two stating that they heard the next morning that the prisoner had killed the deceased. It is not alleged that the deceased met his death any other way than that I have explained, nor is the slightest proof offered of a false charge having been got up for the occasion. The moulvee convicts the prisoner, *decut* being the penalty, and I have sentenced him as noted.

Sentence passed by the lower court.—To be imprisoned with labor in irons for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart. and Mr. B. J. Colvin.) The Court, on review of the statement No. 6, in the English department, remarked upon the inadequacy of the punishment awarded by the sessions judge, with reference to the offence committed by the prisoner who should have been tried for wilful murder, not for culpable homicide. The prisoner has appealed; and as the law does not permit any enhancement of punishment, under such circumstances we can only refrain from interference with the sessions judge's orders.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, Esq., *Judges.*

GOVERNMENT AND CHUCHURN SONAR, FAKEER
AND MUSST. MUNBUSEAH

versus

NURSING DASS.

CRIME CHARGED.—Abduction of Musst. Parbuteah, an unmarried female, minor, aged eight years or under, the daughter of the plaintiffs.

CRIME ESTABLISHED.—The same as crime charged.

Committing Officer.—Mr. W. F. McDonell, joint-magistrate for the deputy magistrate of Sewan, with full powers of a magistrate.

Tried before Mr. Henry Atherton, officiating sessions judge of Sarun, on the 11th August, 1854.

Remarks by the officiating sessions judge.—This is a singular case of abduction. The defendant, it is supposed, thought to secure payment of a sum of money by obtaining possession of plaintiff's daughter, and accordingly, on the 5th or 6th of October, 1851, he went to the plaintiff's house, when he was away from home on business and carried off the child, then about seven years of age. The mother and child say he took her away

1854.

November 4.
Case of
Dass.

Sarun.

1854.

November 4.

Case of
Nursing
Dass.

The prisoner was convicted of the abduction of a child.

1854.

November 4.

Case of
Nursing
Dass.

by force, but from the account given by three witnesses, who saw them going away from their home, it does not appear that any violence was then used by the prisoner, and it is very possible that as both plaintiff and defendant lived in the same place, Baturda, a thannah station, the child, knowing the defendant, was not alarmed and accompanied him without resistance. From that time till Poos last, nothing was heard of the child or of the prisoner. She then reached her home now at Nagadah, four *coss* from Baturda, dressed as a boy, and it seems that the defendant concealing her for a time in a field of Indian corn, took her to a neighbouring village the first night, and then started on an expedition to Ajuodeah in Oude and other distant places. They travelled about together till Poos last, when the defendant brought her near her home and then told her to find her way to her parents at the village in which they now reside. The child says that she was obliged by threats of punishment to keep quiet and that she acted as the prisoner's servant, he giving out that she was a brahman's boy, by name Ram Pudurut, who had become his *chelah*. What the man really intended at first to do with the child, it is difficult to say, but he has brought her back uninjured and is therefore simply charged with abduction. The mother, three days after the child was carried off, complained at the thannah, close to her own home, having been at first restrained by a friend of the prisoner, who said he would get her child back, but the darogah, Enait Hossain, neglected his duty by simply noting the complaint in the *rozenamcha*, and not reporting the matter to his superior. Subsequently, in 1852, after the appointment of another darogah, search was made for the defendant, but without success, and he at last came forward on the day of the sale of his property seized in consequence of his absence. The prisoner says he has had nothing to do with the child, but that he has for the last four or five years been on a pilgrimage to Juggernath and visiting various places, and many witnesses are produced, who state that he left the place in Koor 1257, F. S., but their evidence is worthless, and the abduction is clearly proved by the evidence for the prosecution. In this instance, it is not known that the prisoner has ever attempted to sell or otherwise improperly dispose of the child, but he nevertheless deserves severe punishment, for the parents have had above two years' anxiety and been so jeered by the people of their village that they have been obliged to leave their native place of residence, and moreover had the prisoner happened to die while away, the child, in all probability, would have fallen into the hands of some prostitute, and been doomed to a vicious life all her days. I have therefore sentenced the prisoner as noted, the law officer finding the crime charged established, and the prisoner liable to discretionary punishment, which I award under Clause

7, Section 2, Regulation LIII. of 1803, as the case has not been committed under Section 2, Regulation VII. of 1819, and is not punishable under Section 6, Regulation VII. of 1817.

Sentence passed by the lower court.—To be imprisoned without irons for three (3) years, from the 11th August, 1854, and to pay a fine of one hundred (100) rupees on or before the 10th September next, or in default of payment to labor until the fine be paid or the term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart. and Mr. B. J. Colvin.) This case was referred to the law officer of the Court for a *futwa*, who declared the offence charged punishable by *tazeer*. It appears from the record that the prisoner was named by the child's mother, when it was taken away in October, 1851, as the person who had carried off her daughter, and the witnesses, who saw the child in his company on that occasion, have deposed to that fact. The prisoner pleads that he went on a pilgrimage five years ago, two years before the occurrence of the offence with which he is charged was committed. Several witnesses speak to having seen him in his wanderings without the child, and others to his having started as alleged on a pilgrimage. The evidence, as to dates, is uncertain and, contrasted with that for the prosecution, is unworthy of credit. We confirm the sessions judge's sentence.

1854.

-- November 4.

CASE OF
NURSING
DASS.

PRESENT:

A. DICK AND B. J. COLVIN, Esqs., Judges.

GOVERNMENT

versus

DHURM LALL SINGH (No. 16,) RAM RUCHA (No. 17.)
BADUL SINGH (No. 18,) GOBIND SINGH (No. 19.)
RAMKURN SINGH (No. 20,) HUREE SINGH (No.
21,) SEW RAM (No. 22,) RAMDHAREE (No. 23,) JUI-
ROOP (No. 24,) SEW SUHOY (No. 25,) JAI RAM (No.
26,) HURRUKHDHAREE (No. 27,) AND BEEKOO ROY
(No. 28, APPELLANTS.)

Patna.

1854.

November 7.

CASE OF
DHURM LALL
SINGH and
others.

CRIME CHARGED.—Affray attended with severe wounding of Dhurm Lall Singh (prisoner No. 16,) and Sew Ram Singh (prisoner No. 22.)

CRIME ESTABLISHED.—Affray attended with severe wounding of Dhurm Lall Singh (prisoner No. 16,) and Sew Ram Singh (prisoner No. 22.)

Committing Officer.—Mr. W. Ainslie, magistrate of Patna.

Tried before Mr. W. Travers, sessions judge of Patna, on the 7th August, 1854.

Proof of guilt
insufficient
against three
of the prison-
ers, who were
therefore ac-
quitted on ap-
peal.

1854.

November 4.

Case of
DHURM LALL
SINGH and
others.

Remarks by the sessions judge.—This affray arose out of disputed right to possession of a mangoe tope, situated in mouzah Sohaneepore, close to the civil station of Bankepore. The day upon which the affray took place was stormy and a quantity of fruit had fallen. It was in collecting this, that the collision took place. It is not clearly made out, which party were the aggressors, but two men were severely wounded with swords, and it is proved that all the prisoners were more or less participators in the fight. The wounding of Dhurm Lall Singh, who lost an ear and several fingers, is proved against Sew Suhoy and Jai Ram, and the wounding of Sew Ram is established clearly against Ram Rucha, Gobind and Ramkurn. The remainder of the prisoners fought with *lattees* only, but every one of them aided and abetted in the affray. I convict all of them of the charge laid in the indictment, and in this finding the moulvee of the court concurs. The defence made consists almost entirely of accusations and recriminations of either party one against the other, and the evidence in support of it is in no way exculpatory. The prisoners are accordingly sentenced as below. Jai Ram will suffer five years' imprisonment with labor in irons, his offence is aggravated by the fact of his being officiating burkundaz when the affray occurred. The prisoners, Ram Rucha, Gobind Singh, Ramkurn Singh, and Sew Suhoy Singh, will suffer four years' imprisonment each, and pay a fine of two hundred rupees each, on or before the 1st of September next ensuing, or, in default of payment, they will labor. The prisoners, Dhurm Lall Singh, Badul Singh, Huree Singh, Sew Ram Singh, Ramdharee Singh, Jugroop Singh and Hurrukhdharee, will suffer two years' imprisonment each, and pay a fine of one hundred rupees each on or before the 1st September next ensuing, or, in default of payment, they will labor. The prisoner, Bheekoo, on account of his extreme age, is exempted from labor, but he must also undergo a sentence of two years' imprisonment, since his implication in the riot, by the bad example of his presence and encouragement to the rest, is clearly made out.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The Court see no reason for interference with the conviction and sentences, passed on the prisoners Nos. 16, 17, 18, 19, 20, 22, 24, 25, 26 and 27, and confirm the same. Not satisfied with the proof of guilt brought against the prisoners, Huree Singh No. 21, Ramdharee No. 23, and Beekoo Roy No. 28, they acquit them and order their release.

PRESENT :

B. J. COLVIN, Esq., *Judge*.

GOVERNMENT AND CHITBAHUL TEWAREE

versus

MUHEEPUTLAL (No. 8.) RUCHRA ROY (No. 9.) AND
RAM SURAN TEWAREE (No. 10, APPELLANTS.) Shahabad.

CRIME CHARGED.—Wilful murder of Bullee Tewaree and 1854.
wounding Chitbahul Tewaree, the prosecutor.

CRIME ESTABLISHED.—Culpable homicide of Bullee Tewaree November
and wounding Chitbahul Tewaree, the prosecutor.

Committing Officer.—Mr. H. Richardson, officiating Case of
trate of Shahabad. MUHEEPUT-
LAL and
others.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on
the 21st April, 1854.

Remarks by the sessions judge.—Muheeputlal, prisoner No. 8, Appeal re-
is the putwarry of the village, and had formed an illicit con- jected. An
nexion with Rajbunsee Koowar, the widow of the deceased omision by
prioritor. Rajbunsee having left her house to live with Muhe- the civil sur-
putlal, the collection of the ryots' rents was in the hands of her son. geon pointed
out.

A diversity of interest between the mother and son being
thus created, the respective parties were at feud, and each striv-
ing to obtain payment, the unfortunate ryots were subjected to
extra harassment and vexation.

The prosecutor's property having been attached he went to
the putwarry, prisoner No. 8, and finding him in the house with
Rajbunsee Koowar, remonstrated with him on his intimacy and
other matters. The prisoner assaulted him, and on Bullee Te-
waree the deceased (who was sitting by at the time) telling
them to desist, Muheeputlal with his partizans attacked him,
and the former struck him a violent blow on the elbow with a
hand stick (called "*hurouttee*"), which broke the bone; ten or
twelve days afterwards, Bullee Tewaree came into the station
and was admitted into hospital. From neglect and improper
treatment, the arm had become swollen and inflamed, the in-
flammation eventually communicated to the lungs and he died

in great pain. The above oc-
currences are distinctly and
clearly related by the eye-witnesses noted in the margin.*

The prisoners pleaded an *alibi*, and prisoner No. 8 brings a
rambling counter-charge against other parties, but the evidence
of the witnesses examined on their behalf, is altogether unsatis-
factory and inconclusive.

The *fulwa* convicts the prisoners of culpable homicide of Bul-
lee Tewaree, with wounding Chitbahul Tewaree and declares them
liable to "*scasut*."

1854.

November 7.
Case of
MUHSEPUT-
LAL and
others.

This is not an aggravated or heinous case of man-slaughter. The blow was struck under some provocation, it was not apparently levelled at the head, and the stick was of moderate size. The bone of the elbow appears to have been broken, though the evidence on this point is not as clear as might be wished; the civil surgeon, being unable from the swelling and inflammation of the parts, to state positively whether it was so, and the testimony of the other witnesses, on such a point, not being conclusive.

That death ensued from such a blow is doubtless a matter of surprise, the wound is described by the medical officer *punctured* wound, and it is evident that the *point* of the stick, which is called "*hurouttee*" and is described as extremely hard, must have penetrated the bone (when the elbow was raised to ward off the blow) and the wound must, from improper treatment, have extended itself towards the joint, previous to the man's admission into hospital.

The immediate cause of death was inflammation of the lungs, but the civil surgeon speaks confidently as to the disease being the direct consequence of the inflammation caused by the blow.

On the other hand, prisoner No. 8, is the putwarry of the village, and the evidence goes to shew that his proceedings had been a cause of oppression and harassment to the tenants, enraged and exasperated by the prisoner's conduct, the prosecutor went to complain of an unjust attachment of his property, and finding the prisoner in the house with his paramour remonstrated with him on his illicit connexion and oppressive conduct.

On this provocation, the prisoner struck the plaintiff on the head with a stick, and on the interference of the unfortunate deceased, levelled the blow which terminated fatally.

Sentence passed by the lower court.—No. 8 to be imprisoned without irons for four (4) years from the 21st April, 1854, and to pay a fine of 100 Rs. on or before the 5th May, 1854, in default of payment to labor until the fine be paid or the term of his sentence expire. Nos. 9 and 10 each to be imprisoned without irons for two (2) years from the 21st April, 1854, and to pay a fine of 20 Rs. each on or before the 5th May, 1854, in default of payment to labor until the fine be paid or the term of their sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) The facts detailed above are fully substantiated by the evidence, I therefore confirm the conviction and sentence.

The civil surgeon should have examined the arm after death to ascertain the exact nature of the injury to it.

It has been before pointed out to the sessions judge that appeals should be received on plain paper.

PRESENT :

A. DICK AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT

versus

GOOLIE SINGH (No. 21,) SURBANATH (No. 22,) BAREENATH (No. 23,) DEEPRAM MAHARA (No. 24,) NARONATH (No. 25,) GOUR MAHARA (No. 26,) SHEIKH ABID ALIAS ABADOOLLAH (No. 27, APPELLANT,) AND KASHEE SINGH (No. 28, APPELLANT.)

Sylhet.

CRIME CHARGED.—1st count, wilful murder of Sheikh Eaz; 2nd count, affray attended with the homicide of Sheikh Eaz; 3rd count, affray attended with assault and wounding; 4th count, being accomplices in crimes contained in the 1st and 3rd counts.

1854

CRIME ESTABLISHED.—Affray attended with culpable homicide.

November 8.
Case of
SHEIKH ABID
alias ABAD-
OOLLAH
and KASHEE
SINGH appel-
lants and
others.

Committing Officer.—Mr. T. P. Larkins, officiating magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 9th August. 1854.

Remarks by the sessions judge.—The prisoners Nos. 21 to 26 were cultivating some land said to belong to Raj Chundro Dutt, but which is claimed by the Rajah of Tipperah, when the deceased and prisoners Nos. 27 and 28, who are servants of the Rajah, came and resisted them, and attempted to drive them off the ground. The deceased struck the first blow, a general fight ensued and the deceased was killed by a blow on the head which fractured his skull.

Sentence reduced of prisoners petitioners, no greater criminality being proved against them, than against the opposite party.

These facts are sworn to by four witnesses, and are admitted by the greater part of the prisoners.

The assessors convict all the prisoners of affray attended with culpable homicide, and in this verdict I concur, but I have sentenced prisoners Nos. 27 and 28, to a greater punishment than the others in consequence of their being the aggressors.

Sentence passed by the lower court.—Nos. 21 to 26 to be imprisoned without irons for four (4) years, and to pay a fine of Rs. 25 on or before the 20th August, or to labor until the fine be paid, or the term of their sentence expire, and Nos. 27 and 28, to (7) seven years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) On perusal of the depositions of the eye-witnesses, the Court do not discover any greater criminality on the part of the Rajah of Tipperah's people than in that of the other side. The latter, it seems, were ploughing the dis-

1854. puted land, when the former desired them to desist. The first
 November 8. blow seems to have been struck by the party opposed to the
 Case of Rajah's people. The sentence therefore passed on the peti-
 SHRIKH ABID tioners, Abid No. 27, and Kashee No. 28, is reduced to that
 alias ABAD- passed on the other prisoners, viz. to four years' imprisonment
 OOLLAH without irons, and a fine of 25 rupees in lieu of labor.
 and KASHEE
 SINGH appel-
 lants and
 others.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

GOVERNMENT AND OTHERS

versus

24-Pergun- SONASSEE BAGDEE (No. 1,) AND RAMDHION BAGDEE
 naha. (No. 2.)

1854. CRIME CHARGED.—1st count, burglary in the house of the
 prosecutor attended with wounding of Warris Chowkeedar, and
 November 9. theft of property worth Co.'s Rs. 4-1, belonging to the prosecutor
 Case of Dooseece bearer; 2nd count, No. 1, having in his possession
 SONASSEE part of the plundered property knowing it to have been acquired
 BAGDEE and by burglary.
 another.

CRIME ESTABLISHED.—Nos. 1 and 2, burglary and theft.

Committing Officer.—Mr. J. R. Ward, officiating magistrate

The magis- of Howrah.
 trate was in- Tried before Mr. J. H. Patton, officiating additional sessions
 formed that on judge of 24-Pergunnahs, on the 26th June, 1854.

Remarks by the officiating additional sessions judge.—On the
 night of the 5th of April last, the houses of the three co-prose-
 cutors were broken into. This occurred towards morning and
 the chowkeedar of the quarter happened to be near the spot at
 the time. He heard the rattling of brass utensils in the house
 of the prosecutor Dooseece bearer and woke the inmates, when
 Dooseece's wife remarked that the cats were probably trying to
 get at the food set apart for the children. The chowkeedar,
 however, does not seem to have been satisfied with this reply.
 His suspicions were roused and he went a little aside to watch.
 Presently he saw three or four persons rush out of the house
 and Dooseece after them shouting "stop thief." The chowkeedar
 confronted and fought with them, and in the encounter
 received two or three blows on the head from a *lattee*, one of
 which felled him to the ground. The thieves escaped, but the
 chowkeedar identified the prisoner Sonassee Bagdee No. 1, and
 named him to the prosecutors who came up immediately after
 the scuffle. Information was sent at once to the police *pharee*
 and the prisoner secured. He confessed before the darogah, but

1854.

November 9.

Case of
SONASSEE
BAGDEE and
another.

denied before the magistrate. After he had been in jail a day, he sent word to the magistrate by the jailor, that he wished to make disclosures which might lead to the apprehension of his accomplices. He was accordingly brought before the magistrate and not only named his accomplices in the burglaries in question, but detailed other affairs in which he had taken part. The magistrate sent him back to the darogah, with instructions to record his confession in due form and test its genuineness, by an inquiry as to the truth or otherwise of the alleged burglaries. The darogah's reports are on the whole satisfactory on this head. They prove the occurrence of burglaries in the places indicated in the confession, but as the latter did not specify the names of the persons robbed, proof positive of the affairs may be considered wanting, though little doubt can exist as to their actual perpetration. In his second confession before the police the prisoner Sonassee named his co-prisoners, Ramdhon Bagdee No. 2, Shebu Bagdee (sentenced in the case following) Bunmali chowkeedar (acquitted by this court) and Ishur Bagdee (not taken). The prisoner Ramdhon also confessed before the darogah, and both made full and detailed confessions before the magistrate, the former admitting his complicity in six burglaries and two previous convictions, and the latter in three, one being an attempt only. They are both persons of notorious ill-fame and the terror of the neighbourhood in which they reside. The prisoner Sonassee Bagdee makes no defence before this court beyond a denial of the charges and repudiation of his confessions. He calls no witnesses. The prisoner Ramdhon Bagdee pleads a good character denying and repudiating as above. Of the three persons named to his defence, none presented themselves for examination. The sentence passed on the prisoners is in some measure a consolidated sentence, in accordance with their respective confessions.

Sentence passed by the lower court.—No. 1, to be imprisoned with labor and irons for ten (10) years, No. 2, to be imprisoned with labor and irons for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart. and Mr. B. J. Colvin.) There is no ground for interference with the finding and sentence in this case.

We observe that on Sonassee Bagdee's being brought to the magistrate from the jail, the magistrate, instead of pursuing the course described by him, should have himself duly recorded his confession, and then had it tested by the darogah's inquiries as to the occurrence of the several robberies.

PRESENT :

SIR R. BARLOW, BART. AND B. J. COLVIN, Esq., *Judges.*

GOVERNMENT AND OTHERS

24-Pergun-
nahs.*versus*

SEEBOO BAGDEE.

1854.

November 9.

Case of
SEEBOO BAG-
DEE.Case connect-
ed with the
above.

CRIME CHARGED.—1st count, burglary in the house of prosecutor and theft of property to the amount of Co.'s Rs. 20-11; 2nd count, having in his possession part of the stolen property, knowing it to have been acquired by burglary.

CRIME ESTABLISHED.—Being an accomplice in a burglary and theft.

Committing Officer.—Mr. J. R. Ward, officiating magistrate of Howrah.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 26th June, 1854.

Remarks by the officiating additional sessions judge.—This case arises out of the foregoing. The prisoner was arrested on the confession of the prisoner Sonassee Bagdee and Ramdhon Bagdee (convicted and sentenced, as above, but released in the case as per statement No. 8, trial No. 12, of this month). The prosecutor on being interrogated as to the alleged burglary and theft which occurred about three months ago and was not inquired into at the time, admitted the fact and stated that on the night in question he was awoken by the village dogs barking, and getting up with a light, saw that the house had been broken into and the clothes lying strewn about the floor and near the aperture. He is a washerman by trade, several articles of wearing apparel appear to have been found in the house of the prisoner after his arrest by the police, which were identified by the parties to whom they belonged. From some cause, which has not been explained, the prisoner's statement was not recorded at the thannah, but on his coming before the magistrate, he made a full confession of having committed the burglary and theft charged, in company with Sonassee, Ishur and Ramdhon aforesaid, shared in the plunder and taken part on a previous occasion in an attempt to commit a similar offence. The prisoner denies the charge before this court and asserts that he made no admissions before the magistrate. He calls witnesses to character, but the two persons examined on the point pronounce him to be a man of notoriously bad reputation. It is this consideration added to his confession, which is tantamount to an admission of having belonged to a gang of burglars, that has induced me to pass the heavy sentence I have done.

Sentence passed by the lower court.—To be imprisoned with labor and irons for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart. and Mr. B. J. Colvin.) The prisoner has appealed. He confessed before the magistrate. His witnesses say nothing in his favor. We see no ground for interference.

1854.

November 9.

Case of
SEEBOO BAG-
DEE.

PRESENT :

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

GOVERNMENT AND HURRO DAINEE

versus

ADAREE DAIEE.

CRIME CHARGED.—Maliciously cutting off the nose of his wife (Hurro Daince) with a sharp instrument, and thereby maiming and deforming her.

CRIME ESTABLISHED.—Wounding his wife by cutting off her nose.

Committing Officer.—Mr. H. B. Lawford, officiating magistrate of Nuddeah.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Nuddeah, on the 1st September, 1854.

Remarks by the officiating additional sessions judge.—The prisoner pleads guilty to this charge of cutting and maiming, but justifies the act by an alleged course of abandoned conduct on the part of the injured party, who is his wife. He states in his confessions throughout, before the police, the magistrate and this court, that he had no more than on one occasion had proofs of his wife's infidelity, and that on the night the crime was committed he missed her from his side, and taking a knife with the intent of putting an end to a miserable existence, in the event of his failing to discover the fugitive, went out in quest of her. After roving about for some time he discovered her about daylight in company with a man, who ran off as soon as he saw him. He then tried to reason with his wife and induce her to return home, but she lent a deaf ear to all his entreaties and vowed that she would never retract the step she had taken. He adds that exasperated at her wilful and determined disregard of all reason and entreaty, he threw her on the ground and cut off the tip of her nose with the view, he alleges, of spoiling her beauty. The prosecutrix's account of the affair is very confused and very contradictory, but sufficiently consistent with the prisoner's confessions to induce a strong belief that they are the truth. Beyond those confessions there is no proof of the prisoner's guilt. As these records, however, while they disclose a wanton course of

Nuddeah.

1854.

November 9.

Case of
ADAREE
DAIEE.

Conviction
upheld, but
sentence cor-
rected.

1851. unfaithfulness on the part of the sufferer, unmistakeably impute
 November 9. to the prisoner a predetermination to do bodily injury, I have
 endeavoured to temper the punishment and regulate its extent
 by the standard of a just retribution.

Case of
 ADAREE
 DAIEE.

Sentence passed by the lower court.—Imprisonment with labor
 and irons for four (4) years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Bar-
 low, Bart., and Mr. B. J. Colvin.) The prisoner has appealed,
 but he has confessed throughout the act charged.

The sentence is illegal, imprisonment should have been com-
 muted to fine. The sentence must be amended to imprisonment
 for four (4) years with labor commutable to a fine of 25 Rs.,
 payable in fifteen days.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, Esq., *Judges.*

GOVERNMENT, KUMOLAKANTH DUT AND GOUREE-
 SUNKUR SURMA

versus

Mymensingh. MUSST. AUTOREE (No. 2.) AND SHEIKH JOYDHUR
 (No. 3.)

1854.

November 9.

Case of
 MUSST. AU-
 TOREE and
 SHEIKH JOY-
 DHUR.

CRIME CHARGED.—1st count, knowingly uttering counter-
 feit coins; 2nd count, having in their possession counterfeit
 coins knowing them to be such; 3rd count, fraud in gilding
 silver coins and selling them at the price of gold as being
 gold.

CRIME ESTABLISHED.—Knowingly uttering counterfeit coins,
 and having in their possession counterfeit coins knowing them
 to be such.

The sentence
 passed by the
 sessions judge
 was not strict-
 ly according
 to law, but
 held that it
 could not be
 enhanced.

Committing Officer.—Mr. R. Alexander, magistrate of My-
 mensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymen-
 singh, on the 25th July, 1854.

Remarks by the sessions judge.—From the evidence of the
 prosecutors and witnesses Nos. 11, 12, 13 and 14, it appears
 that the prisoner No. 3, went to the second prosecutor's house to
 sell two-half gold mohurs of old coinage, and that No. 2 was
 also along with him, and that person took No. 3 to the first
 prosecutor who suspecting from the colour, rubbed one of them
 on a stone when the silver appeared and he discovered they were
 counterfeit; they then detained No. 3 for the night to make
 him over to the police, but he escaped in the morning. No. 2,
 on her apprehension stated before the police, that No. 4 (of the
 acquittal statement) had at first given her a gold quarter piece
 and a half piece to sell for him, which she carried to the second

prosecutor's house, and sold there, and they promised to pay the price the next day; that No. 4 again gave her five-half and one-quarter pieces to sell, and the next day, she and No. 3 went there with them; that the second prosecutor then carried them to the first prosecutor's when they took four-half pieces from her, and also snatched a half and a quarter piece, saying the price would be paid to No. 3, and then confined them letting her however go shortly after; that she was not aware that they were counterfeit as No. 4 said they were genuine. Prisoner No. 3 also admitted having accompanied No. 2, to sell gold coins which No. 4 gave her to sell; that the prosecutors confined them both, but released No. 2 in the evening, and let him go in the morning and he did not run away, and that the quarter-piece found at his house was one of those No. 4 gave them to sell. In the foudarry and before this court, prisoner No. 2 adhered to her confession that No. 4, gave her the coins to sell which she in company with No. 3 carried to the prosecutors for sale. Before the magistrate, prisoner No. 3 admitted having gone along with No. 2, but that he himself sold nothing. In this court however, he denied the charge, saying that he was compelled by ill-treatment to make a false confession before the darogah and he was tutored by a burkundaze to repeat it before the magistrate. The witnesses cited by the prisoners knew nothing in their favor while, they for the most part stated that they heard they had sold counterfeit gold coins. The *futwa* of the law officer convicted them on the first and second counts, in which verdict I concurred. The magistrate should have, I think, dealt with the case himself under Section 11, Regulation XVII. of 1817.

Sentence passed by the lower court.—To pay a fine of (24) twenty-four Rs. each, or, in default, to be imprisoned for a term of six months.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) The sessions judge has already been told, from the English department, that the committal and conviction on the charge of knowingly uttering counterfeit coin was wrong. He has observed that the magistrate should have disposed of the case himself, but the magistrate could not have done it had the charge of uttering been correct; moreover the sessions judge, having convicted of uttering, has punished as for possessing counterfeit coin only, but the sentence also is wrong even upon the conviction of having counterfeit coin in possession, for the fine should have four times the nominal value of the coin attempted to be passed. As we cannot enhance the sentence on appeal, we only point out to the judge his misapprehension of the law for his future guidance.

The appeal is rejected.

1854.

November 9.

Case of
MUSST AU-
TOREE and
SHEIKH JOY-
DHUR.

PRESENT :

SIR R. BARLOW, BART., AND B. J. COLVIN, Esq., *Judges.*

GOVERNMENT AND JUMOONA KUSBEE

versus

ROHOMUTOOLLAH (No. 5,) SHEIKH MEAJAUN KHOLEEFA (No. 6,) AMEER MEER (No. 7,) AND LALL MAHOMED SIRCAR (No. 8.)

Mymensingh.

1854.

November 9.

Case of
ROHOMUTOOL-
LAH and
others.The prison-
ers' appeal was
rejected, the
proof against
them being sa-
tisfactory.

CRIME CHARGED.—1st count, committing dacoity in the house of the prosecutrix and plundering therefrom cash Rs. 83 and property consisting of gold and silver ornaments, brass and *cassa* utensils, cloth, a box, a *petara*, &c., valued at Rs. 185-9-9; 2nd count, Nos. 5, 6 and 7, knowingly receiving and possessing property obtained by the above dacoity; 2nd count, No. 8 being an accomplice in the above 1st count; and 3rd count, privy to the above 1st count.

CRIME ESTABLISHED.—Prisoners Nos. 5 and 8, dacoity, No. 6, dacoity and knowingly receiving property obtained by dacoity, and No. 7 knowingly receiving property obtained thereby.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 22nd August, 1854.

Remarks by the sessions judge.—From the evidence of the prosecutrix, Jumoona Kusbée and her witnesses, and the admission of prisoners, Nos. 5, 6 and 8, before the darogah, and that of Nos. 5 and 8, before the magistrate, it appears that a party of professional *lattees* had, a few days before the occurrence, halted near the house of No. 6, for the purpose of obtaining employment with some of the landholders who were at enmity with each other; that on the night of the occurrence the prisoners and others about thirteen or fourteen persons armed with *lattees* proceeded to the bazar at Shagunge and attacked the house of the prosecutrix; that some of them held her down and prevented her giving the alarm, while the others after lighting two torches broke open a chest, and cleared it of its contents, two or three at the same time keeping watch outside, they then decamped with the spoil. The matter was immediately reported to the police, and the darogah repaired to the spot and commenced his inquiries. The prosecutrix recognized none of the robbers, but gave a description of one of them, viz., No. 6, which led to his apprehension. The darogah also arrested No. 5, who lived with No. 6, and upon being questioned admitted he accompanied Nos. 6, 7, 8 and others for the purpose of committing the dacoity that the plundered property was at No. 6's house, and he gave

1854.

November 9.

Case of
ROHOMUTOOL-
LAH and
others.

up some stolen property. No. 6, on being apprehended, also admitted having committed the robbery with the other prisoners, and the *latteals* who halted near his house, and gave up his share of the property which was at his house and pointed out other property which was concealed in that of No. 7. No. 8, was harboured by one Lochun Biswas and his people and when the police apprehended him, they attacked the darogah and rescued him. On his apprehension he confessed having committed the dacoity along with the other prisoners and the *latteals*, and received 6 rupees for his share out of the sum of 83 rupees plundered, and that the rest of the articles were left with No. 6. No. 7 denied the charge and resorted to *alibi* for his defence, but he could not account for the articles which were found in his house, while the other prisoners implicated him as one of their party. Before the magistrate Nos. 5 and 8 repeated their mofussil confession; No. 6 repeated his mofussil admission and urged that from enmity, the darogah had thrown some of the prosecutrix's property into his house and then recorded that it was recovered from him. No. 7 also denied the charge. In this court all the prisoners denied the charge, and No. 5 claimed the property, viz., a *dhootee* as his own. No. 6 urges enmity with the police. No. 7 *alibi*, and No. 8 ill-treatment by the darogah. The recovery of the several articles has been fully proved as above recorded, though there are some minor discrepancies in the evidence of the witnesses as to the identification of some of the articles in this court as compared with that before the magistrate. The prosecutrix it appears at first mentioned that she lost 50 rupees, but she filed a supplementary list that the amount plundered from her house was 83 Rs., and that there were other small articles which she in the first instance omitted in the list from want of memory, but which she afterwards on recovery distinctly deposed to. The main point however that a dacoity was perpetrated in her house by a party among whom Nos. 5, 6 and 8, confessed to the crime and implicating each other, and the recovery of a great portion of the plundered property from them has been clearly made out, while the defence offered by them in this court failed to exculpate them from the charge. I therefore convicted Nos. 5 and 8 of dacoity and No. 6 of dacoity and knowingly receiving plundered property, and No. 7 of knowingly receiving such property. No. 6 was before punished for theft. The case was tried under Act XXIV. of 1843.

Sentence passed by the lower court.—Nos. 5 and 8 to be imprisoned with labor and irons each for the period of ten (10) years. No. 6, ditto for twelve (12) years, and No. 7, ditto for five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) We see no reason to interfere on appeal by the prisoners, the confessions of Nos. 5 and 8, before

1854.
November 9.
Case of
ROHOMUTOOLAH and
others.

the police and the magistrate, and the evidence to the production of property from the other prisoners, Nos. 6 and 7, and its recognition by the prosecutrix and the witnesses named by her, when contrasted with the defence, which is in no way supported, justify the conviction and sentence passed by the sessions judge.

PRESENT :

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

SOOKHMOYEE AND GOVERNMENT

versus

ANUND CHUNDER ROY.

24-Pergunnahs.

1854.
November 9.
Case of
ANUNDCHUNDER ROY.

CRIME CHARGED.—1st count, wilful murder of Poran Roy by administering to him a poisonous root or substance called "*kath beesh*," or aconite; 2nd count, attempt to murder Sookhmoyee Burmonce, prosecutrix, Bemola Burmonce, and Pearce Burmonce, by administering to them a poisonous root or substance called "*kath beesh*," or aconite.

Prisoner convicted of the wilful murder of his brother by poisoning him with aconite, in doing which he also nearly killed several other members of the family, sentenced to death.

Committing Officer.—Mr. H. Fergusson, magistrate of the 24-Pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 23rd September, 1854.

Remarks by the officiating additional sessions judge.—The prisoner, Anund Roy, is charged with the wilful murder of his brother, Poran Roy, and the attempt to murder Sookhmoyee Burmonce, the prosecutrix, Bemola Burmonce and her daughter, Pearce Burmonce, by administering to them in food a poisonous root or substance called *kath beesh*, *anglice* aconite, and pleads *not guilty* to the indictment.

The following is a history of the tragical events, out of which this trial has arisen. The prisoner is the younger brother of the deceased and contracted an intimacy with a Kowra woman of the name of Shama, much to the annoyance of the deceased and the females of the family, who never lost an opportunity of upbraiding him for his defection from his social position. This connection also entailed on him extraordinary expences, to meet which he, from time to time, received assistance from his brother, Poran. It is asserted that after a time Poran refused to make further advances unless the prisoner consented to sell him his share of the patrimony. This was done, and a conveyance of the property duly executed and lodged with a mutual friend. Owing to this transaction, which was never particularly agreeable to the prisoner, and the discreditable connection he had formed, the seeds of discord

Dwarkanath Roy, witness No. 21.

1854.

November 9.

Case of
ANUND CHURN-
DER ROY.

appear to have been sown in the minds of the two brothers, and the younger began to entertain, towards the elder and his family, feelings *akin* to deadly hatred, which at times he was at no pains to conceal. It was in this state of mind that he conceived the idea of murdering

Gobind Laha, Benia, witness No. 13.

the whole family, and with that view purchased about an ounce of aconite root, as well known to natives as ourselves to be the most destructive of poisons. He repaired to his brother's house on the day of the murder and partook of the morning repast, apart from them of course, being an outcaste from the family. He observed, however, that a portion of the vegetable broth used on the occasion was not consumed, and saw it set apart for the evening meal in a vessel hung up in the cook-room. After eating, he appears

Kashinath Ghose and Prem Chand
Ghose, witnesses Nos. 14 and 15.

to have gone away and was seen pounding some substance on a brick, which, it will be

hereafter shown, was the aconite root in question. When this operation was completed, the prisoner returned to his brother's house, and on pretext of getting some fire for smoking went into the kitchen and deposited the powder in the utensil, which contained the vegetable broth. When the hour for the evening meal arrived, the prisoner contrived to be present, and though pressed to eat, declined doing so. The persons who partook of the repast were the deceased, Poran Roy, his wife, Sookhmoyee Burmonee, his aunt Bemola Burmonee, and his cousin Pearcee Burmonee. The former ate first, and probably got the largest

Sookhmoyee Burmonee, prosecutrix.
Bemola Burmonee, witness No. 11.

share both of the broth and the poison. He was taken ill almost immediately, complain-

ed of a burning sensation in his

Tara Chand Mal, witness No. 17.
Amunt Ram Roy Sen, witness No. 18.

throat and stomach, vomited once and expired during the night. The three women were seized with the like symptoms

and soon fell into a state of insensibility, but recovered after the lapse of several hours, the quantity of poisonous matter swallowed by them, having proved insufficient to destroy life. Early

Obhie Churn Roy, witness No. 19.
Dwarkanath Roy, aforesaid.

in the morning the prisoner apprised some distant relatives and friends of the deceased,

who lived close at hand, of the death of his brother, Poran, and the dangerous state of his female relations, and alleged that these events were the result of cholera. On learning from him that the occurrences took place during the night, they upbraided him for his neglect in not immediately applying to them, and according to his statement, bound and beat him, accusing him of having compassed by some unlawful means the calamitous events that had taken place. In this state of things, the pri-

1854.

November 9.

Case of
ANUND CHUN-
DER ROY.

soner alarmed and conscience-stricken was determined to be before hand with his accusers, and repairing to the thannah, as soon as the deceased's body was removed for the purposes of cremation, laid a criminal information against the witnesses

Fukir Muhumud, witness No. 26.

Dwarkanath Roy and others,

ing beaten Poran Roy to death.

and charged them with hav-

Gulzar Singh, jemadar, witness No. 27.

The consequence of this move

brought back to the nearest police station. Here some inquiry was made, and certain interrogatories put by the subordinate

was, that the ceremony of burn-

ing was staid, and the body

Aforesaid witnesses Nos. 18, 19
and 21.

police officer to the parties con-

cerned, particularly to Omesh

Roy, son of the deceased, an

intelligent looking boy of between eight and nine years old.

This lad who was examined on oath before the magistrate and

told the same tale, stated that

Shookmoyee prosecutrix, aforesaid.

Bemola Burmonee, witness No. 11,
(ditto.)

he saw the prisoner go into

the kitchen and put something

into the vessel, which contained

the broth; which disclosure, taken in connection with the rum-

mour circulated by the prisoner that his brother had died of

cholera, turned the tide of suspicion against him. The body

was brought back to Poran Roy's house whither the darogah

had proceeded to hold the in-

Sudanund Ghose witness No. 1.

Biprodas Burnick, witness No. 2.

Das Churn Das, witness No. 5.

Ramdhun Ghose, witness No. 6.

quest and the suspicion against

the prisoner being further con-

firmed from the inquiries made

by that officer, he was taken

into custody, and then and there made a full, free and detailed

confession of having poisoned his brother and his family, with

the reasons which induced him to commit the deed, and the

manner in which he achieved it. The purport of this confession

has, in a great measure been anticipated by the recital I have

above given.

F. P. Strong, (Mr.) witness No. 3.

The testimony of the civil

surgeon describes the effects of

aconite on the human subject, and he has recorded it as his opi-

nion, on the *post mortem* examination held on the body of Po-

ran Roy, that he is "unable to account for death on any supposi-

tion other than that the deceased had swallowed some vegetable

poison, as for instance aconite." The symptoms mentioned by

Mr. Strong were generally observable in the deceased and the

three women after partaking of the poisoned food.

The prisoner denied the charge before the magistrate, and

though admitting that he had made a confession before the

police, alleged that it had been extorted under threats and ill-

usage. On the magistrate asking him if he had any witnesses

to prove that the police had resorted to unlawful means to obtain his confession, he replied in the negative. 1854.

The only defence the prisoner makes on the trial is, that he is the victim of a conspiracy got up against him by the witnesses, Dwarkanath Roy and others, who murdered the deceased. He cited some witnesses to character, but only one person appeared and he described him as a man of bad repute. November 9.
Case of
ANUNDCHUN-
DER ROY.

The *futwa* of the law officer acquits the prisoner of murder, but finds him guilty of mixing poisonous matter in food, with intent to kill Poran Roy and his family, from partaking which the said Poran Roy died, and the woman Sookhmoyee, Bemola and Pearce became insensible, and declares him liable to discretionary punishment by *akoobut*.

I cannot concur in this finding, presenting as it does the anomaly of a distinction without a difference. If the prisoner is guilty of any crime, that crime is murder. He admits that his object was to destroy life, and he effected that object by the means made choice of, viz., poison, and I cannot understand why this killing should be designated "no murder." The chain of evidence against the prisoner is complete. He confesses that he made up his mind to poison his brother and family, on account of their offensive conduct towards him in the matter of the woman, Shama, and purchase of the patrimonial property, and points out the individual from whom he procured the poison. This person admits that he sold some aconite to the prisoner, on the plea that he required it for medicine combined with other ingredients, for which he promised subsequently to call, *but never did*. On the day of the murder, the prisoner was seen alone pounding some substance on a brick. He was subsequently observed to enter the kitchen, in which the poisoned food was kept. He was present when the family partook of the evening meal, and though pressed to eat, declined to do so. He witnessed the distressing symptoms evinced by his brother after swallowing the poison, and refused to go for assistance when besought by his sister-in-law, Sookhmoyee. He circulated the rumour that the deceased had died of cholera, and when suspected of foul play by those who knew his character, he forestalled his accusers and charged them with the murder. I have seldom seen a clearer case and evidence better arranged, and I think it due to the magistrate to record thus publicly my sense of the admirableness of the commitment. A conviction of murder by poison is not of frequent occurrence, particularly as in the present instance, where its indications in the human subject cannot be ascertained by chemical analysis. I convict the prisoner of a cold-blooded, deliberate, atrocious murder, and seeing nothing in his case to render him an object of mercy, recommend that he be sentenced to suffer death.

P. S. The boy, Omesh Roy, was not examined on the trial,

1854.

November 9.

Case of
ANUND CHUN-
DER Roy.

owing to his extreme youth, and ignorance of the nature and obligations of an oath.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart. and Mr. B. J. Colvin.) The evidence in this case, as detailed in the letter of reference, affords the clearest proof against the prisoner. Though the fact of his having put something into the earthen pot, which contained the food which had been poisoned, could not be proved in consequence of the child, who saw the prisoner in the act, being ignorant of the obligation of an oath; yet his mother has sworn that her boy mentioned to her as soon as she had recovered from the effects of the poison, which she also took with the food, that he saw the prisoner enter the cook-room and heard the noise he made when moving the cooking-pots. The prisoner confessed in the *moffussil*, and before the magistrate admitted that he did confess, adding however it was by compulsion; when called upon for evidence to establish this plea, he said he had none.

The prisoner pointed out the person from whom he purchased the aconite, and that individual has been made a witness in the case, and has proved the purchase. On being offered the food of which the deceased and his other relatives partook, the prisoner refused to eat it. He refused also to call for assistance when they were taken ill, and gave two different statements as to the cause of his brother's death, first ascribing it to cholera and then charging the relatives before the police with having killed him. Upon consideration of all the circumstances brought to light, the well connected chain of evidence and the prisoner's own defence on the record, we see no reason to doubt his guilt, and therefore sentence him, as proposed by the sessions judge, to death.

PRESENT :

A. DICK AND B. J. COLVIN, Esqs., *Judges*.

GOVERNMENT

versus

KOLIMOOLLAH (No. 4, APPELLANT,) AND SHEIKH RO-
HIMOOLLAH (No. 5.)

Sylhet.

1854.

November 10.

Case of
KOLIMOOL-
LAH and
SHEIKH RO-
HIMOOLLAH.

The prison-
ers were ac-
quitted, the
alleged perjury
having been
committed in
the prelimina-
ry investiga-
tion under
Clause 6, Sec-
tion 2, Re-
gulation III.
1812.

CRIME CHARGED.—Perjury, in having on the 28th February, 1854, intentionally and deliberately deposed under a solemn declaration, taken instead of an oath, before the officiating magistrate of Sylhet, that on the 3rd Falgoon, at Zindabazar in Sylhet, about one *pahar* A. M., Ramnarayn Shah struck me with his own hand with a sandal three or four times on my back, and in having on the same day again intentionally and deliberately deposed under a solemn declaration, taken instead of an oath, before the said officiating magistrate, that Ramnarayn Shah never beat me in Zindabazar; the assault is untrue, such statements being contradictory of each other on a point material to the issue of the case, and No. 5, perjury in having on the 28th February, 1854, intentionally and deliberately deposed under a solemn declaration, taken instead of an oath, before the officiating magistrate of Sylhet, that I saw Ramnarayn Shah by means of his servant Oda forcibly carry away the plaintiff, and Ramnarayn Shah himself beat him and in having stated that the assault took place at Zindabazar in Sylhet, and in having on the same day again intentionally and deliberately deposed under a solemn declaration, taken instead of an oath, before the said officiating magistrate, that I heard from Kolimoollah the plaintiff, of his having been in Zindabazar assaulted, and that I did not see Ramnarayn Shah beat Kolimoollah, such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. T. P. Larkins, officiating magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 2nd May, 1854.

Remarks by the sessions judge.—The prisoner Kolimoollah is charged with having, on the 28th February, deposed on oath that one Ramnarayn beat him with a shoe and with having sworn on the same day that he was not beaten by the said Ramnarayn. He pleaded guilty before this court and voluntarily confessed to the magistrate that he had been instigated by Ramnarayn himself to make the false charge, as he was anxious to come to Sylhet, and could not do so for fear of arrest by the civil court, whereas he would, if summoned by the magistrate, be exempt from arrest.

1854.

November 10.

CASE OF
KOLIMOOLLAH
AND
SHEIKH RO-
HIMOOLLAH.

Of the truth of this story there is no evidence, but if true, the prisoners' guilt would not be thereby lessened.

Rohimoollah swore that he had been a witness to the assault of Kolimoollah by Ramnarayn, and he afterwards swore that he had not seen any assault. The two contradictory statements are proved, and the prisoner could make no defence.

Sentence passed by the lower court.—Three (3) years' imprisonment with labor in irons.

On perusal of the above remarks the Court,—(Present : Messrs. A. Dick and B. J. Colvin) recorded the following resolution No. 817, dated 25th August, 1854.

The Court, having perused the papers above recorded, observe that, from the record sent, and likewise from the statement of the magistrate in the calendar, and of the sessions judge in his monthly abstract, they are unable to discover whether the party falsely charged by the prisoner, Kolimoollah, was ever summoned and put on his trial. It has been held by the Nizamut Adawlut in the case of Rambux Lall and Jeetoo Koomhar and others, pages 170 and 185, of Nizamut Reports for February, 1854, that the charge of perjury cannot be preferred against prosecutors or witnesses, founded on their depositions recorded, before any one is on trial. The Court, therefore, direct that the sessions judge ascertain and inform them whether Ramnarayn was summoned and put on his trial, and also forward to this Court the whole of the papers on record in the case of the petition of the prisoner, Kolimoollah. They further request the sessions judge to intimate if there were any civil process out against Ramnarayn at the time, which could have given cause to the false complaint of prisoner, as averred by him. The sessions judge will put both the prisoners, Kolimoollah and Sheikh Rohimoollah on bail, until final orders be passed by this Court.

In reply to the above resolution the following letter No. 45, dated 12th September, 1854, was submitted by the sessions judge.

I have the honor to acknowledge the Court's resolution No. 817, dated the 25th August, 1854, and to submit all the papers connected with the case of Kolimoollah and others.

I also submit the proceedings held by me on the trial of Ramjoy Surmah mooktear, connected with the same case, who has appealed, and beg to inform the Court that I have put him on bail as well as Kolimoollah and Rohimoollah.

A civil process was out against Ramnarayn, when the false charge was preferred, and there is little doubt that under the advice of his mooktear he suborned Kolimoollah to make it, but there was not legal evidence enough for his conviction.

Ramnarayn does not appear to have been actually under trial when the false depositions were given, as the prosecutor and his witnesses broke down at the commencement of their conspiracy,

but a judicial proceeding had been held and in respect to that, depositions were material. 1854.

When the trial of the prisoners, Kolimoollah and Rohimoollah, was held by me, the Court's decisions for the month of February, had not been received by me, and now that I have read them, I trust the Court will excuse me for respectfully hoping that they will be pleased to re-consider their decision, as the point is one of very great importance. November 10.

Case of
KOLIMOOL-
LAH and
SHEIKH RO-
HIMOOLLAH.

The Court have ruled that a false deposition on oath cannot be considered perjury, unless some one should at the time be on trial or be put on trial in consequence of it, but the provisions of Regulations II. of 1807 and XVII. of 1817, do not require this. They only require that some judicial proceeding or some case should be before the court, and that with reference thereto a false deposition should have been given. They do not require that any one should be actually under trial.

Regulation VII. of 1811, Section 5, has in no respect modified or altered the provisions of Regulation II. of 1807. It has only given a power to the magistrate, which he had not before, to punish malicious or vexatious charges, whenever he shall consider it proper to do so, but it is clear that in cases calling for a greater punishment than he can award, that he has still the power of commitment on a charge of perjury, and this point has been so decided three times by the Court of Nizamut. I beg leave to refer the Court to Construction 233, January 29, 1816.

Granting that in many malicious and false charges the sentence within the power of the magistrate is sufficient for the ends of justice, there are some, where it would be clearly inadequate, as when a man maliciously charged a woman falsely with a want of chastity, or a man with having committed an unnatural crime; in such cases I conceive the highest penalty for wilful perjury, would not be too severe, and it would surely be an insufficient reason for awarding only six months, that the parties so maliciously charged had not in consequence been put upon their trial, for the perjury would have been completed.

If the Court adhere to its decision in regard to prosecutors, I would respectfully submit that the provisions of Section 5, Regulation VII. of 1811, are in no respect applicable to witnesses giving false depositions in support of a false charge. In regard to them, no option of punishment has been granted to the magistrate, and he must, it appears to me, either commit them to the sessions on a charge of perjury or allow them to escape unpunished.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The definition of perjury is laid down in Clause 1, Section 4, Regulation II. of 1807, that it must be a false deposition on oath, &c., relative to some judicial proceeding, civil or criminal, and upon a point material to the issue

1854. thereof. Now in this case, the preliminary investigation prescribed by Clause 6, Section 2, Regulation III. of 1812, had
 November 10. alone been gone into, the case had not assumed the character of a judicial proceeding against the accused. No process having been issued, Construction 233 and the precedents referred to in it, do not therefore bear upon this case.

Case of
 KOLIMOOL-
 LAH and
 SHEIKH RO-
 HIMOOLLAH.

We observe, with reference to the concluding paragraph of the judge's letter No. 45, that witnesses, who depose falsely cannot, under similar circumstances to those in this case, be punished for perjury, although it may be a question whether they are not punishable for conspiracy.

With reference to the above remarks, we acquit Kolimoollah and Rohimoollah and direct their release.

PRESENT :

A. DICK AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT

versus

RAMJOY SURMAH.

Sylhet.

1854. CRIME CHARGED.—1st count, being accomplice in subornation
 November 10. of perjury of Kolimoollah and Rohimoollah; 2nd count, being privy to the facts of subornation of perjury.

Case of CRIME ESTABLISHED.—Being accomplice in the subornation
 RAMJOY SUR- of perjury of Kolimoollah and Rohimoollah; 2nd count, being
 MAH. privy to the facts of subornation of perjury.

See preceding Committing Officer.—Mr. T. P. Larkins, officiating magistrate
 Case. of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 18th August, 1854.

Remarks by the sessions judge.—One Ramnarayn wished to come to Sylhet and as he was evading a warrant of arrest from the civil court, he suborned one Kolimoollah to charge him with assault and some witnesses to prove the fact. The matter, however, transpired, Kolimoollah admitted that he had given a false deposition and so also did one of the witnesses and they were convicted before me of perjury in May last. In June the acting magistrate took up the case against Ramnarayn, the prisoner, who is his mooktear, and a third party, and recording his opinion that it was unnecessary to commit them to the sessions, punished them himself. On appeal his conviction was quashed, as he had no power to punish any one in a case in which other implicated parties had been committed to the sessions. On going through the papers, however, I did not think there was sufficient

evidence to convict Ramnarayn and Kishenchurn the third party, so I released them and directed him to commit the prisoner Ramjoy Surmah to this court.

1854.

November 10.

Case of
RAMJOY SUR-
MAH.

That the original charge made against Ramnarayn by Kolimoollah was a false one, is not denied by Ramjoy Surmah the prisoner in the present case, and its falsehood is proved by the proceedings of this court held on the trial of Kolimoollah and another, but the prisoner denies any wilful participation in the crime.

Bhoolanath Dhur, witness No. 2, deposes that the prisoner Ramjoy brought Kolimoollah and others to him and said they would give him a power of attorney, and that he must get their depositions taken and obtain leave for them to go home, but that as he knew the prisoner Ramjoy to be the agent of Ramnarayn, he was suspicious and wondered how he could be employed in a case against him. That he, the witness, is the mookteer of one Ramnarayn, who had the decree against Ramnarayn, and that the prisoner had told him that Ramnarayn could not be arrested by civil process if summoned in upon a criminal charge. This witness has been consistent in his story before the magistrate and this court, and his evidence has been in no respect rebutted.

Hurchunder Dam, witness No. 3, deposed that Kolimoollah in his presence told Ramjoy Surmah, the prisoner, that Ramnarayn had sent him to prefer a false complaint against himself, and the prisoner thereupon asked him if he had brought any instructions to him from Ramnarayn, and that upon his answering in the negative, the prisoner said he would not believe him. That Kolimoollah, however, constantly came to the prisoner's house, and that on a particular occasion he came with the prisoner and a peadah of the magistrate's court and pointed out Kishore Mallee, as a witness in the case brought by Kolimoollah against Ramnarayn; Gore Singh Peadah, witness No. 4, deposes to his having accompanied the prisoner Ramjoy and Kolimoollah to serve a notice upon Kishore Mallee which he did, and he further added that the prisoner Ramjoy or Kolimoollah accompanied the witnesses in Ramnarayn's case to the magistrate's nazeer. Before the magistrate he distinctly declared it was the prisoner Ramjoy who reported their attendance to the nazeer.

Doorganath Joogee deposes to witnessing the serving of the process and declares Ramjoy was present; Kishore Mallee deposes to his having been sent by Ramnarayn to the prisoner Ramjoy Thakoor with money and a letter, and to the presence of Kolimoollah at the prisoner's house, and the evidence of these witnesses satisfies the mind that the prisoner Ramjoy was knowingly and wilfully an accomplice in the subornation of Kolimoollah in the false charge made by him against his master Ramnarayn.

The prisoner in his defence urges that the witnesses are ene-

1854.
 November 10.
 Case of
 RAMJOY SUN-
 MAH.

mies of his. That his trial by the sessions court is illegal, and that his innocence is proved by the fact of his having told the seristadar of the magistrate's court of the false charge was being made against his master Ramnarayn.

He did not attempt to prove the existence of enmity on the part of the witnesses for the prosecution, and did not even advance the plea before the magistrate, and his three witnesses to the fact of his telling the seristadar of the plot cannot be credited. They are three low fellows not likely to have been admitted, as they state they were, at night into the seristadar's house, and do not agree in their story, one says the room which he called the cutcherry was full of people, and a second says, there were only a few persons present, and that they distinctly heard the prisoner say that if the seristadar would not report the story to the magistrate, he, the prisoner, would. The third one slightly differed in saying he stayed outside the room, and that the story was to be told to the company.

If there were any truth in this story, the prisoner would have summoned the seristadar, a course which he knew from his practice as a mooktear to be the right one; but this he omitted to do, knowing doubtless that the story would be denied. The foundation of the story is this. The seristadar reported to the magistrate the rumours which he had heard of the falsehood of Kolimoollah's charge, but omitted to name the parties from whom he heard them, and the prisoner, therefore, taking advantage of this circumstance, endeavoured to prove that he was the party who had given the seristadar the information.

One assessor convicts the prisoner of the charges made against him, but there are extenuating circumstances, while the second considers the evidence insufficient for conviction.

Sheikh Kolimoollah, an important witness against the prisoner, committed a bare-faced perjury by denying that he knew the prisoner, or had given the deposition against him before the magistrate, and he has therefore been committed by me for trial.

Sentence passed by the lower court.—Imprisonment without irons for (4) four years, and to pay a fine of 200 rupees, on or before the 1st September, 1854, or in default of payment to labor until the fine be paid or the term of his sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) This prisoner is acquitted, with reference to the remarks in the case of Kolimoollah and Rohimoollah. As the main charge of perjury has broke down, there can be no conviction of its subornation.

PRESENT :

H. T. RAIKES, Esq., *Judge.*
J. H. PATTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

KALLYSHURN SURMAH MOZOOMDAR (No. 4.)

Rungpore.

1854.

CRIME CHARGED.—Forgery in having fabricated a deed, (a *putnee patta* for four annas share of Kismut Bholta) which was filed on the part of Ramkoomaree the wife of the prisoner, in the sudder ameen's court of Bograh, as a material document in a case instituted by Birmomoi against the said Ramkoomaree; 2nd count, having filed in the sudder ameen's court of Bograh the aforesaid *putnee patta*, knowing it to have been forged.

November 10.

Case of
KALLYSHURN
SURMAH
MOZOOMDAR.

CRIME ESTABLISHED.—Having filed in the sudder ameen's court of Bograh, a *putnee patta*, knowing it to have been forged.

Prisoner convicted of issuing a forged potta, by filing it in the sudder ameen's court, sentenced to five years' imprisonment. Appeal rejected.

Committing Officer.—Mr. R. H. Russell, joint-magistrate of Bograh.

Tried before Mr. G. U. Yule, officiating sessions judge of Rungpore, on the 11th August, 1854.

Remarks by the officiating sessions judge.—The first charge was not established against prisoners Nos. 4 and 6, nor the sole charge against prisoner No. 5. I need therefore only mention the evidence against prisoner No. 4, on the 2nd charge of knowingly issuing a forged *patta*.

Birmomoi Dasseea a widow (witness No. 6.) owner of a four anna-share in Kismut Bholta, a village about ten miles from Bograh, resided with her mother Kumul Money Dasseea at Raikali, a village eighteen miles from the station. On the 18th Bysack, 1259, she there received as message from Ramgobind Dass Kobiraj witness No. 9, farmer of her Bholta estate that, a *patta* had been executed at Bograh in her name and registered granting the said estate in *putnee* to the wife of prisoner No. 4. She next morning came into Bograh (Maltnugur) went to the house of Kishtonath Buksee witness No. 5, fell at his feet and begged his aid without which she was utterly ruined. Kishtonath is a very old man of considerable wealth and some station, had formerly held her estate in farm, which farm he had of his own accord resigned to her in 1256, five years before the lease was out. He took up her case and directed a petition to be filed in the joint-magistrate's court, but as his naib and others went to present this, they were desired to postpone doing so by the collector serishtadar who thought the affair might be arranged; various attempts to settle it appear to have been made, but without success, and on the 12th May, (the *patta* being dated 15th

1854. Bysakh or 26th April,) a complaint was made to the joint-magistrate which after some evidence had been taken was dismissed, the document not being before the court; Birmomoi then instituted a suit to annul the *patta* in the sudder ameen's court, and in the defence, the prisoner No. 4, on the part of his wife, filed the alleged forged *patta*. The sudder ameen decreed the case in plaintiff's favor and considering the *patta* a forgery made over prisoner, No. 4, to the joint-magistrate, who committed him and the other prisoners on the charges mentioned.

November 10.
Case of
KALLYSHURN
SURMAH
MOZOOMDAR.

On the trial it was proved by witnesses Nos. 7 and 8, and Birmomoi herself (who attended the court in a *doolee*, her identity being admitted by the prisoners) that she was at Raikali in her mother's house, nine coss from Bograh, when on the 18th Bysakh 1259, she received a message from Ramgobind Dass witness No. 9, informing her of the execution of a *patta* at Bograh in her name, that she had been there uninterruptedly for a long time before that date, and that she did not leave her mother's house till the day after receiving the said message.

Witnesses Nos. 4 and 5 prove that on being told by witness No. 10, of the execution of the *patta*, witness No. 5 desired prisoner No. 4 to be called, and on his coming, asked him why he had done such a thing, to which prisoner replied I have done what I have done, and offered to give up all the papers, to which witness No. 5 replied, he would have nothing to do with such injustice; that Birmomoi came to witness No. 5, on hearing of the *patta*, through witness No. 9, and begged him to aid her which he agreed to do, and witness No. 4, his naib was accordingly directed to take the necessary measures. These two witnesses also state that some days before the 15th Bysakh 1259, prisoner No. 4 came to witness No. 5, and borrowed a *dakhila* from him bearing Birmomoi's signature, alleging he wished to compare it with the signature on a *patta* of some lands he intended taking from her. This *dakhila* which was returned to witness No. 5, is not now forthcoming and the story being somewhat improbable, and not mentioned in the first trial, was set aside by the law officer and myself in forming our opinion in the case.

Witness No. 9 proves that on hearing of the execution of the *patta*, he sent notice to Birmomoi at Raikali who came over next day.

Witnesses Nos. 4, 5, 9, 10 and Trilochun Biddeabhoosun prove that a complaint was about to be made in the joint-magistrate's court, immediately on Birmomoi's hearing of the execution of the *patta*; that various attempts were made by influential persons at Bograh quietly to settle the affair, prisoner No. 4, being a brahmin and pundit, but without success, and that then the complaint was made on the 12th May.

Doorganath and Govindnath *vakeels* prove the reception of the *patta* from prisoner No. 4, and their filing it in Birmomoi's case.

1854.

November 10.

Case of
KALLYSHURN
SURMAH
MOZUOMDAR.

The *patta* is written in a 4-rupee stamp paper, Birmomoi's name is written in a shaky hesitating manner, some of the letters retouched apparently. Birmomoi swears it is not her signature. It resembles her acknowledged signature on other papers in the shape of the letters, but not in the freedom with which they were written. The *patta* purports to grant the estate in *putnee*, in consideration of a cash payment of 300 rupees down and a yearly payment of 6 rupees in addition to the sudder jumma of 75-8.

The prisoner in his defence asserts that the *patta* was granted to him by Birmomoi, who herself signed it in his house at Maltinugur on the 15th Bysakh. He calls seven witnesses. Ain Mahomed No. 12, the writer of the disputed *patta* is a ryot and servant of prisoner No. 6, lives four coss from Maltinugur (Bograh.) Birmomoi herself called him and walked into Bograh with him and some of the other witnesses, without any relations or servants with her; they went to No. 4's house, he wrote the *patta* in the adjoining house, Ramkomul Kobiraj's, and it was signed in No. 4's house by Birmomoi to whom Ramkoomaree, No. 4's wife, gave the money and then she went out on the road accompanied by the other ryots, he cannot say whether the rupees were tested when paid, the stamp paper for the deed he said before the joint-magistrate was bought by one Bheema the day before, in his deposition to the sudder ameen he said he knew not who bought it.

The appearance of this witness was very much against him, he dare not look up when giving his evidence, which he did in an uncertain sort of way, as if afraid of contradicting something he had said.

Shonaton chowkeedar, witness No. 13, lives in Satrooka five coss from Bograh held in farm by prisoner No. 4, by whose servant he was called, and on arrival told he was wanted to witness the *patta* which he did.

Ajoo chowkeedar No. 14.—He had come to give his weekly report to the thannah and before going home, went to prisoner No. 4's house, saw a lot of people there and heard that Birmomoi was giving a *putnee* of Bholta to prisoner No. 4; is chowkeedar of Bholta and went to prisoner No. 4's house because he is the farmer of Rughoonath Chuckerbuty's share of that village. Birmomoi took the rupees and gave them to one Moocha, they were tested by Ain Mahomed witness No. 12, can't explain why he said at the foudary that the writing and exchange of deeds were done at one place, here in different places.

Toojaree No. 15, a resident of Bholta.—Birmomoi called him and he accompanied her to Bograh, where he witnessed the execution of the deed, went to register it and saw Birmomoi start home accompanied by a man whose name he does not know, contradicts himself regarding Birmomoi's residence, &c., and cannot explain why he told the joint-magistrate that he never

1854. saw Birmomoi again that day, while here he says he saw her go off home.

November 10. Phool Mahomed No. 16, a resident of Bholta came with Birmomoi and witnessed the execution of the deed, at the foudary he deposed that she came in a *palkee* to prisoner No. 4's house and left again in a *palkee* in the afternoon to go to Jytool, here he says she was on foot, and that he does not know where she went after the deeds were signed.

Case of
KALLYSHURN
NURMAH
MOZOOMDAR.

Malee No. 17 is a servant of prisoner No. 4's and has no house of his own, after execution of the deeds which he witnessed, Birmomoi went away accompanied by Ain Mahomed witness No. 12, and the Bholta ryots, thus directly contradicting their evidence.

Sobandee witness No. 18, lives in Satrooka, five *cos*s from Bograh, of which village prisoner No. 4 is farmer, whose servant called him.

Of these seven witnesses to the deed only one the writer, witness No. 12, can sign his name, he is a ryot of one of the prisoners who was present at the alleged execution of the deed, and who asserts its validity. Witnesses Nos. 13 and 18 are ryots of a farm belonging to prisoner No. 4, situated ten miles from the place where the deed was executed, and who without any connection with Birmomoi or her estate were, they say, especially summoned to witness her parting with her property. Witness No. 14 is a ryot of another farm of prisoner No. 4, he happened to visit the thannah on business and to walk in to prisoner No. 4's in time to see the deeds prepared and exchanged. Witness No. 17 is a servant of the prisoner No. 4, and has no other home than his master's. Witnesses Nos. 15 and 16 are the only two who have any connection with Birmomoi, they live in Bholta, a portion of which prisoner No. 4 holds in farm.

Such evidence not only does not support the defence, but is almost enough of itself to condemn the prisoner. He in his answer and in several petitions presented by him, attempted to show gross contradictions or inconsistencies in the evidence against him, but his assertions were either untrue or the inconsistency was explained or trifling, or arose from an evident error, as when one Udoy Chaund, a witness before the sudder ameen, deposes first that Birmomoi was at Raikali till the 18th Bysakh and afterwards that she heard from Ramgovind of the forgery on the 12th and started for Bograh next day. He also pleads that Act XXX. of 1841, is not applicable to his case for the *patta* being written on a stamp paper of insufficient value, as declared by the sudder ameen, cannot be considered a document within the meaning of that Act, &c. &c. He alleges that the case was got up out of spite by Kishtonath Buksee, but could give no probable ground for the charge.

I considered that the evidence for the prosecution fully estab-

lished the fact that the *patta* was prepared at Maltnugur (Bograh) and Birmomoi's signature attached to it, while she was eighteen miles distant. The case was brought forward, a fortnight after the date of the *patta*, many of the witnesses were examined then and most of them again afterwards in the sudder ameen's and the joint-magistrate's courts, and their various depositions, though taken at great length, and with much unnecessary matter introduced, agree in all essential points with their statements on the trial. The evidence for the defence is by no means so consistent, some of the discrepancies I have mentioned and besides the fact of all the witnesses to the *patta* being ryots or servants, or otherwise under the influence of the prisoners, and with the exception of two utterly unconnected with Birmomoi, would render it almost impossible to credit their evidence however consistent. The law officer convicted the prisoner on the 2nd charge, on full legal proof, and I concurred and passed the sentence mentioned.

Sentence passed by the lower court.—Imprisonment with labor without irons for five (5) years.

Remarks by the Nizamut Adawlut.—(Present Messrs. H. T. Raikes and J. H. Patton.) We find that Birmomoi appeared in person and denied the signature affixed to the deed, and proved to the satisfaction of the sessions judge that she was at the distance of nine *cos*s from Bograh, at the time the deed is said to have been executed. The evidence of the *vakeels*, employed by the prisoner and his wife in the civil suit, satisfactorily proves that the deed in question was handed to them by the prisoner, for the purpose of being filed in the court of the sudder ameen. We agree with the judge that the witnesses cited by the prisoner, though deposing in his favor, are not calculated to remove suspicion from him. They are ryots and dependents of his own, are likely to have given evidence on his behalf without scruple, and we think the judge is justified in placing no reliance on their statements. The probabilities of the case are strongly in favor of the judgment recorded, and seeing no reason to interfere with the conviction, we reject the appeal.

1854.

November 10.

Case of
KALLYSHURN
SURMAH
MOZOOMDAR.

PRESENT :

H. T. RAIKES, Esq., *Judge.*
J. H. PATTON, Esq., *Officiating Judge.*

RAMMONEY BURNICK AND GOVERNMENT

versus

JUGGERNAUTH BURNICK (No. 1,) RAMDOSS (No. 2,) KASHEENAUTH BURNICK (No. 3, APPELLANT,) RAMJOY DOSS BHOOEYEAH (No. 4, APPELLANT,) AND RAMJOY DOSS (No. 5.)

Tippurah.

1854.

November 10.

Case of
KASHEENATH
BURNICK and
RAMJOY
DOSS BHOOEYEAH, APPELLANTS,
and others.

Conviction
and sentence
passed by the
sessions judge
in a case of
culpable homicide upheld in
appeal.

CRIME CHARGED.—Nos. 1 to 4, wilful murder of prosecutor's brother, Ramkonnye Burnick; No. 5, accessoryship after the fact to the above murder.

CRIME ESTABLISHED.—Nos. 1 to 4, culpable homicide of Ramkonnye Burnick, brother of the prosecutor; No. 5 being accessory after the fact to the above homicide.

Committing Officer.—Mr. F. B. Simson, officiating joint-magistrate of Noacolly.

Tried before Mr. H. C. Halkett, officiating sessions judge of Tippurah, on the 14th August, 1854.

Remarks by the officiating sessions judge.—The prosecutor in this case lives in the village of Sonahpore, in thannah Ameer-gong. On the night of the 28th of Assaur, 1261, B. S., he was informed by his brother, the deceased Ramkonnye, that he was about to go on some business to the house of Phezooram Dhoobee, one of his neighbours. The next morning, when he rose, he missed his brother from his usual place, but supposed that he had gone, as he had said he would, to the Dhoobee's house. The prosecutor then himself went to a *haut* at some distance. He did not return home until the Thursday ensuing, when he was much alarmed by hearing from his sister, Chunder Kullah, that no news had been heard of their brother since he had left home last.

His inquiries about his brother proving fruitless, he informed the village chowkedar of the matter, and went with him to the Ameer-gong thannah, where he stated his suspicion that his brother had been made away with by the first four prisoners, who, he well knew, were bitter enemies of his brother.

The parties were thereon arrested, when prisoners, Jugger-nauth, No. 1, and Ramdoss, No. 2, confessed that they had beaten and kicked the deceased, and that he had died under their hands from the ill-treatment he had received.

As their confessions involved the 5th prisoner, Ramjoy Doss, as an accessory after the fact, he also was arrested, and acknowledged his having been aware of the deed, and having afterwards

assisted the other four prisoners to conceal the body. The information supplied by him ultimately led to the discovery of the body, which was found lying under a tree in a spot near the house of a man named Rampersaud living in mouzah Kalessur. The finding of the body not taking place until twelve days after the man's death, little more than a skeleton remained. The deceased was a man in the prime of life, about twenty-seven or twenty-eight years, and was in perfect health at the time of his disappearance.

Before the magistrate, prisoners, Juggernaut No. 1, Ramdoss No. 2, and Ramjoy Doss No. 5, repeated their confessions.

At the sessions all the prisoners pleaded *not guilty*.

The evidence of four persons, who were witnesses to the fact, clearly proved the main charges against the prisoners. Three women, witnesses Nos. 1 to 3, living in the same village with the prisoners, and who themselves occupied the same *baree*, depose distinctly to having witnessed the assault by the four prisoners upon the deceased, who was thrown down by them and beaten, and kicked when in that position. This occurred about midnight of the same day, on which deceased had left his house in the manner detailed above. The night was a moonlight one and they could see clearly what passed. The women screamed out on seeing what happened, when the prisoners abused and threatened them, compelling them to silence. The four prisoners then took up the body, which the eye-witnesses all state, being heavy like that of a dead person, and carried it off in an easterly direction towards the hills. These witnesses state further that Gooroodoss Doss, witness No. 4, the brother of the prisoner, Ramdoss (No. 2,) came up to where the prisoners were standing, after the assault and spoke to the prisoners. This man was ultimately directed by the joint-magistrate to be retained as a witness, as his evidence was most necessary for the elucidation of the case. In his evidence he states, that he had seen the prisoners in consultation together, and had heard from his brother, prisoner Ramdoss No. 2, that they had been consulting about their design to kill the deceased. The woman Somittra, cousin of the above witness, and who lives in the same house with him and prisoner, Ramdoss Doss (No. 2,) states in her evidence, that on the day in question she saw the prisoner, Juggernaut, take Ramdoss Doss, prisoner (No. 2,) aside, and speak to him in private, as if in consultation. Labonee Doss, another witness (No. 22,) residing in mouzah Kalessur, states that he found a body lying in the paddy-field belonging to him, and that he and his neighbours, Ramgopaul and Rampersaud (witnesses Nos. 21 and 22,) recognized it as being the body of Ramkonnye, whom they had known previously. Afraid of being drawn into some trouble from the body being found near their dwellings, they aided Labonee Doss, (witness No. 20,) to re-

1854.

November 10.

Case of
KASHEENATH
BURNICK and
RAMJOY
Doss BHOO-
YEAH, AP-
PELLANTS,
and others.

1854.

November 10.

Case of
KASHEENATH
BURNICK and
RAMJOY
DOSS BHOO-
YEAH, AP-
PELLANTS,
and others.

move the body from where it was found by them, to the spot where it was afterwards, on their information, found by the police. The spot where the body was found by these witnesses, (being that where it was first thrown by the prisoners) was about two *cos*s from the house of the deceased, and the place where it subsequently was discovered, on the information, by the police, was about half a mile further off.

That there had been enmity for some time past between the first four prisoners and the deceased is clearly proved by the evidence of several witnesses. The prisoner Ramjoy Doss (No. 4.) had an illicit connexion with the sister of the deceased, who had had a quarrel with him on that account, and had beaten him. The deceased had also quarrelled and fought with Kasheenaath, (prisoner No. 3.) with whom he had a disagreement about his not affording proper support to his (deceased's) niece the woman, Jyekallee, who was married to Kasheenaath's brother, Ooma Kanth, then absent at Akyab. It further appears that the deceased had an intrigue with the woman, Kazee, the wife of a man named Ramdoss Potdar. This woman had afterwards for her lover, the prisoner Juggernaath, so *that* person also nourished ill-will towards him. The fourth prisoner, Ramjoy Doss Bhooyeah, had carried on an intrigue with the deceased's sister, Chunder Kullah, and there was ill-will between them on that account.

A neighbour of the prisoners, named Komul Doss, produced a *tauveez* or armlet given to him by the prisoner Ramdoss Doss, two or three days before the arrival of the darogah to investigate the case. He had been requested by the prisoner to keep it for him. The *tauveez* was recognized and sworn to by two witnesses, as well as by the prosecutor, as being the property of the deceased, Ramkonnye.

The confessions of the prisoners, Juggernaath Burnick (No. 1,) Ramdoss Doss (No. 2,) and Kasheenaath Burnick, (No. 3.) are attested by the witnesses, in whose presence they were taken in the mofussil and before the magistrate.

Of the manner in which the deceased met his death, there can exist no doubt whatever. The confession of three of the prisoners, as well as the positive and direct evidence of eye-witnesses sufficiently attest the fact; but nothing elicited in the case can sustain a charge of wilful murder against the prisoners. Some weight may be attached to the circumstance of the consultation of the prisoners beforehand, as showing malice aforethought, and, as stated by one witness, Gooroodass Doss (No. 4,) a deliberate design to put him to death, but this man's evidence goes no further than that he had *heard* from his brother Ramdoss Doss, (prisoner No. 2,) that the other prisoners had designed to kill the deceased and had wished him to join them. This even, if admitted to be true, would not affect the other

prisoners, being only the allegation at second hand of one of them. The confessing prisoners, Juggernath Burnick, (No. 1,) and Ramdoss Doss, (No. 2,) make no mention of their having entertained any further designs against the deceased than to give him a beating; and this assertion is supported by the facts; for had the prisoners really cherished the intention of putting him to death, they would have used very different means to effect their purpose than what their own avowal and the evidence of the eye-witnesses show that they actually employed. No weapons of any kind were used, which would certainly not have been the case had they designed to murder the man, and all the evidence tends to show that they intended to effect nothing more than what some of themselves allege, viz., to inflict a beating upon a man towards whom they bore a grudge and jealousy. In this, as in many other similar cases, the result went further than what was ever designed or contemplated by the actors.

In concurrence with the *futwa* of the law officer, who held that the act of the prisoners amounted to culpable homicide, I sentenced Juggernath Burnick (No. 1,) Ramdoss Doss (No. 2,) Kasheenath Burnick, (No. 3,) and Ramjoy Doss Bhooyea (No. 4,) as principals to five years' imprisonment with labor in irons, and Ramjoy Doss, (prisoner No. 5,) as an accessory after the fact, to three years' imprisonment, and to pay a fine of 30 Rs., otherwise to labor until the expiry of the term of his sentence, or until payment of the fine.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) Although the prisoners have denied throughout any participation in the homicide, the prisoner, Kasheenath, admitted in the foudary that he heard the commotion which took place in Ramdoss' house on the night in question, and also heard of deceased having been beaten to death. The direct evidence of the eye-witnesses, however, implicates both the prisoners as actually assisting the others in the assault, and confirmatory proof of the truth of their statements is so far afforded by the repeated confessions of the other prisoners, that we must regard them as sufficient to establish the guilt of these prisoners, who, we observe, could get no witnesses to support their defence before the sessions. We reject this appeal.

1854.

November 10.

Case of
KASHEENATH
BURNICK and
RAMJOY
DOSS BHOO-
YEAH, AP-
PELLANTS,
and others.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

RAMZAN ALEE AND GOVERNMENT

versus

HURNAM DOSADH.

Hazareebagh.

1854.

November 11.

Case of
HURNAM
DOSADH.

The prisoner was not sentenced capital-ly, with reference to reasons recorded by the lower court.

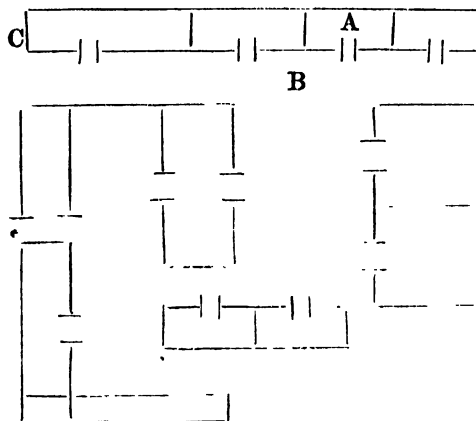
CRIME CHARGED.—Wilful murder of Diam Alee Kullah by striking him with a spear.

Committing Officer.—Mr. R. Thompson, junior assistant of Koordah sub-division.

Tried before Major J. Hannington, deputy commissioner of Chota Nagpore, on the 9th September, 1854.

Remarks by the deputy commissioner.—The prosecutor states that his father, the deceased, Diam Alec, had gone in the day-time to the house of one Jeetun Dosadh, and was there wounded by the prisoner; prosecutor was called to see his father after the event, and found him within the enclosure of Jeetun's house. He died on the second day afterwards. Prosecutor has no further personal knowledge of the facts.

Before the police officer, the deceased made a statement to the effect, hearing a noise at Jeetun's house, he went there and was, without any provocation given, wounded by the prisoner, Hurnam Dosadh, with a spear.



The marginal plan will aid the comprehension of this rather obscure case. A is an apartment occupied by three females of Jeetun's family, B is the spot where the murder occurred, and C about the place where the witnesses depose to having seen the fact. In the original plan, the police officer has noted that the

prisoner came out of the house A and wounded deceased, but of this circumstance, no other trace appears.

The prisoner pleads *not guilty*. No. 1, witness Jeetun Dosadh, states that he had left his spear in the enclosure of his house, and had gone to make his report at the police station, and was

returning homewards, when he heard Diam Aleo within the enclosure of witness's house, calling for aid, and saying that Hurnam Dosadh had wounded him with a spear. Witness and three others ran into the enclosure and seized the prisoner, and witness drew the spear out of the deceased. Information was immediately given to the police officer, witness saw the wound inflicted, he was about ten paces distant outside his own door on the north side. Witness did not ask deceased why the prisoner had wounded him, prisoner said it was his fate, none else were in the house, three women had gone out to gather wood. The prisoner had put up at witness's house the night before the fact.

1854.

November 11.

Case of
HURNAM
DOSADH.

Three other witnesses depose as follows : Supkoo saw the wound inflicted, he was then ten paces distant, Koiwa did not see the fact, but saw the prisoner with the spear in his hand, and took him into custody, Sookun did not see the fact but heard the deceased cry out, that the prisoner had wounded him. Did not hear any previous disturbance, prisoner had hold of the spear when taken up. The women were all absent.

These witnesses also prove the confession of the prisoner before the police officer. This is to the effect that the deceased had spoken abusively to him, and he therefore gave him one thrust of a spear. Prisoner had put up at Jectun's house on the previous afternoon. The prisoner in his defence states that his confession was extorted by the darogah, who put him to torture by burning his hands with a torch, prisoner heard some women say that a seller of liquor had died of cholera, prisoner never so much as saw Diam Aleo.

For the defence.

No. 10, Gokool, These witnesses speak to the previous
„ 11, Koonj Sahoo, good character of the prisoner.
„ 13, Dewan. The jury,* whose names are entered below, find the prisoner *not guilty*. They doubt the testimony of the witnesses to the fact, because the situation was not readily visible from the outside.

I differ from this verdict. I find no reason to doubt that the witnesses did really apprehend the prisoner, under circumstances that assured them of his having committed the act. And this is borne out by the confession of the prisoner, which he admits having made. The cause of the murder does not appear. There is evidently a high probability that something occurred that has not transpired. However, had there been any thing that would tend to excuse the prisoner, it is reasonable to suppose that he

* Lalla Gujraj Singh, mooktear.
Ukhery Jujoru Lal, mooktear.

1854.

November 11.

Case of
HURNAM
DOSADH.

would himself have declared it. The explanation in his confession is, that he was provoked by abusive language. But abusive language is far too common among these people to excite ungovernable rage, it is the daily, hourly habit of their lives. There is no shadow of justification made out for the prisoner's act.

These ignorant races are cruel—not so much from malice, as from want of reflection. If provoked, they use the weapon nearest at hand without the least forethought of its effect. They yield to a revengeful impulse, and kill where they mean only to punish.

In the present case, though there be no justification, there is on the other hand no proof that the act was premeditated, and in such circumstances, I conceive that capital punishment may and ought to be remitted. I find the prisoner guilty of wilful murder, and recommend that he be sentenced to imprisonment for life with hard labor in irons and in transportation.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) The prisoner confessed in the mofussil that he speared the deceased because he abused him. In the foudary court and before the sessions he pleaded *not guilty*. Two witnesses have throughout sworn to seeing the prisoner inflict the wound, of which the deceased died; two others do not adhere to this story of seeing him in the act, though they depose they accompanied the other two to the spot, where the deceased was found wounded, on hearing him cry out that the prisoner had wounded him. The deceased, shortly before his death, swore that the prisoner was his assailant; with reference to the observations of the deputy commissioner, we think that the ends of justice will be satisfied with passing sentence upon the prisoner of imprisonment for life in transportation, as proposed by the lower court.

PRESENT:

Hazareebagh. SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges*.

1854

BURJOO AND GOVERNMENT

November 11

Case of

KOLEHA.

versus

KOLEHA.

CRIME CHARGED.—Wilful murder of Bechoo, father of the prosecutor.

The prisoner was sentenced to death for committing a treacherous murder.

Committing Officer.—Captain W. H. Oakes, principal assistant, Governor-General's agent, Lohardugga division.

Tried before Major J. Hannington, deputy commissioner, Chota Nagpore, on the 25th September, 1854.

Remarks by the deputy commissioner.—The prosecutor states that his father, the deceased, Bechoo, had for two years past rented a field from the prisoner, Koleha, and had this year paid the rent in advance. Prosecutor and deceased were tilling the field, which the prisoner wished to prevent, and after some words, the deceased proposed that they should have the dispute settled at the police station. They had set out for that purpose, when suddenly the prisoner cut down the deceased with an axe. Prosecutor was close by, but did not see the blow struck, heard it, and saw the prisoner running away with the axe in his hand. There had been a dispute about the field at seed-time, and the prisoner had oversown the tenant's crop.

The prisoner pleads *not guilty*. No. 1, witness, Doorjun, states that one Friday in the latter half of Assar, he and prosecutor and the deceased were tilling a field in Rokedega, when the prisoner came and forbade them. They said to him, The field is yours; but we have paid the rent and why should we not till it? They then offered to refer the disputes to the police station, and prisoner proposed that they should go to one Abhai Singh. Accordingly witness and Burjoo and Bechoo and Koleha, these four, set out together. They had proceeded about the distance of two gun-shots from the field, when the prisoner cut down Bechoo with an axe, and having done so, went into the jungle. Witness saw the blow inflicted, he was then about fifteen paces distant. Witness immediately went to give information to the police, Bundhoo and Chytoo were tilling their fields near to the scene of the murder. Prisoner is the steward of Rokedega village.

- * No. 2, Bundhoo.
- .. 3, Chytoo.
- .. 4, Juttoo.

These witnesses* state that they saw the prisoner cut down the deceased with an axe. They were not near enough to hear the words that

passed.

The deceased died immediately.

- † No. 5, Dhodhur.
- .. 6, Teerbhoobun Singh.
- ‡ No. 7, Bundhoo.
- .. 8, Rengta.
- .. 9, Bootes.
- § No. 10, Munnaram.
- .. 11, Needhee.

The apprehension† of the prisoner and the record of the inquest are‡ proved by the witnesses, named in the margin.

The confession of the prisoner before the police officers is proved by the witnesses named in the margin.§

This confession is to the effect, that prisoner was tilling his own field, when the deceased interfered, and prisoner therefore killed him.

The prisoner in his defence says that the deceased was killed by one Bohorun, an armed servant of Abhai Singh's. This is known to the witnesses, Borra and Beerbul. The axe now in court belongs to Bohorun.

1854:

November 11.

Case of
KOLEHA.

1854. For the defence.

November 11. * No. 12, Beerbul.
 Case of „ 13, Borra.
 KOLEHA.

The witnesses* profess their ignorance of any matter of defence.

The jury, whose names† are entered below, find the prisoner guilty as charged.

In this verdict, I concur. There is no proof of premeditation; but the prisoner came armed to the field, and his act was unprovoked and treacherous. I see no reason to doubt that the deceased had paid his rent in advance and had the right of occupancy in the field. There was no forcible opposition by the deceased, but a fair offer of referring the dispute to arbitration. This offer was apparently accepted by the prisoner, and while on the way, he cut down the deceased. Under these circumstances, it becomes my duty to recommend that a capital sentence be passed on the prisoner.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) The prisoner confessed in the mofussil. The eye-witnesses have throughout sworn to seeing him commit the act. In his defence before the magistrate he pleaded *not guilty*, and at the sessions accused one Bohorun of the murder. The prisoner with the deceased and others had consented to lay the case before the police, and *en route* after they had proceeded a short distance, the prisoner cut down the deceased and killed him on the spot. In concurrence with the deputy commissioner, we convict the prisoner and sentence him to death.

PRESENT :

SIR R. BARLOW, BART., AND B. J. COLVIN, Esq., *Judges.*

GOVERNMENT

versus

Hazareebagh.

CHUNDA (No. 4), JEEBOO (No. 5), AND CHUMRA (No. 6.)

1854.

CRIME CHARGED.—Prisoner No. 4, perjury in having on the 3rd August, 1854 deposed under a solemn declaration, taken instead of an oath, before the principal assistant Governor-General's Agent, Lohardugga division, that the defendant Chumra, alias Sookhlul, was not his son, such deposition being false and

Two of the
 prisoners were
 acquitted of
 perjury, as

† Lalla Gujraj Singh, mooktear.
 Ukhori Jujora Lal, mooktear.

having been intentionally and deliberately made on a point material to the issue of the case. Prisoner No. 5, perjury in having on the 3rd August, 1854, deposed under a solemn declaration, taken instead of an oath, before the principal assistant Governor-General's Agent, Lohardugga division, that there is no relationship between him and Chumra, alias Sookkul, defendant, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case. Prisoner No. 6, perjury, in having on the 5th August, 1854, deposed under a solemn declaration, taken instead of an oath, before the principal assistant Governor-General's agent, Lohardugga division, that Jeeboo was not his brother, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

Committing Officer.—Captain W. H. Oakes, principal assistant Governor-General's Agent, Lohardugga division.

Tried before Major J. Hannington, deputy commissioner of Chota Nagpore, on the 20th October, 1854.

Remarks by the deputy commissioner.—It appears that on the 1st August last, Musst. Sukwaro and Kam Mura, brought a suit under Act IV. of 1840, against Sookul, Chunda, Jeeboo, Sookhram, Ayta and Chamoo.

On the same day, the prisoner, Chumra (No. 6,) who was present when the petition was read, made verbal answer, which was recorded to the effect that the land claimed belonged to him, that he had heretofore dispute with the plaintiffs, and that his real name is Chumra, though plaintiff has called him Sookul. His father's name was Gingna. Among others, he named as his *witnesses* Chunda and Jeeboo, who, as above shown, had been made *defendants* in the suit.

The principal assistant, without advertence to the circumstance of their being defendants, took the depositions of Chunda and Jeeboo, who being questioned as to whether they were relatives of the defendant, Chumra, swore positively that they were not. But it was shown that Chunda is the father, and Jeeboo, the full brother of Chumra, who is also and more commonly known by the name of Sookul. Therefore Chunda and Jeeboo were severally committed for trial on a charge of perjury.

In preparing the record of Jeeboo's commitment, the principal assistant summoned Chumra *alias* Sookul, as a witness for the prosecution. Chumra *alias* Sookul then swore that Jeeboo is not his brother. But it was proved in evidence that the deponent and Jeeboo are full brothers, Chumra *alias* Sookul was therefore committed for trial on a charge of perjury.

Before the sessions court, it was clearly proved that the prisoner, Chunda, is the father of Chumra *alias* Sookul, and of Jeeboo, and that Jeeboo and the said Chumra *alias* Sookul are full brothers.

1854.

November 11.

Case of

CHUNDA and others.

they should not have been made witnesses in the particular case.

The third was acquitted, as his commitment arose out of that of the preceding prisoners.

1854.

November 11.

Case of
CHUNDA and
others.

The prisoners were therefore in concurrence with the verdict of a jury convicted of perjury, and were sentenced to imprisonment for three years' with labor without irons.

I am of opinion that this sentence might, with advantage, be mitigated. Not that the perjury should be in any sense excusable, but because it was not, as I think, necessary to place the parties in the position to commit this offence. That Sookul, Chunda and Jeeboo had one interest was apparent on the face of the plaintiff's petition, and for this reason, they should not have been made witnesses at all, unless it were shown that the plaintiff by making them defendants was endeavouring unreasonably to exclude their evidence, which was not shown or suggested to be the case. And under the circumstances of the defendant, Chumra *alias* Sookul, having in his answer called himself the son of Gingna, and having repudiated the ascribed name of Sookul, and of Chunda and Jeeboo having sworn, they were not his relatives, it was not, in my view, a sound discretion to make him a witness against Jeeboo. The witness was driven to the dilemma of having to declare his answer false or of perjuring himself.

But further it was shown by copies of proceedings produced by the prisoner, Chumra, that Kani, one of the plaintiffs in the suit, under Act IV. of 1840, had charged Chumra with witchcraft, and had therefore been sentenced by the principal assistant, on the 18th March last, to imprisonment for fifteen days with fine in lieu of labor, and that on the 19th April following, on the complaint of *Chumra*, the said Kani and others were bound over to keep the peace towards him. In the former of these cases, it was alleged by the defendant that Chumra had *fraudulently changed his name*, but the principal assistant then declined to entertain that charge.

That the perjury charged has been committed by the prisoners, I have not any doubt. But there was no necessity for putting them to the commission of it. What strength could they have against such a trial. It is on this ground that I recommend the reduction of the sentences to the term of one year with labor.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart., and Mr. B. J. Colvin.) The Court concur in the observation made by the deputy commissioner in paragraph eleven of his letter. There was not only no necessity, but it was altogether improper to make Chunda and Jeeboo, Nos. 4 and 5, witnesses against Chumra *alias* Sookul, for they were co-defendants with him in the plaint brought by Musst. Sukwaro. The interests of Chumra, Chunda and Jeeboo were identical, all having been charged with assault and carrying off the plaintiff's cattle and plough. We therefore acquit the prisoners, Chunda and Jeeboo, and direct their release.

These prisoners having been released, as they ought not to have been committed as shewn above, the conviction of the prisoner, Chumra, No. 6, must be quashed and he must be released.

1854.
November 11.
Case of
CHUNDA and
others.

PRESENT :

A. DICK AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT AND BAGOO JOWARDAR

versus

KALOO HAJAM (No. 5,) JOOMUN KHAN (No. 6,) PITUMBER BHOOMICK (No. 7,) KEFATOOLLAH SHEIKH (No. 8,) GORACHAND CHUNG (No. 9,) MEHEROOLLAH SHEIKH (No. 10,) KHOODEERAM CHUNG (No. 11,) SHOBHARAM MUNDUL (No. 12,) AND HURREE MOHUN SIRCAR (No 13.)

Rajshahye.

CRIME CHARGED.—1st charge, Nos. 5 to 12, 1st count, wilful murder of Sadoollah Jowardar; 2nd count, being accessories to the abovementioned murder. No. 13 being an accessory to the abovementioned murder; 2nd charge, Nos. 5 to 12, 1st count, riot attended with the wilful murder of Sadoollah Jowardar; 2nd count, being accessories to the abovementioned riot, attended with wilful murder. No. 13 being an accessory to the abovementioned riot attended with wilful murder.

1854.
November 13.
Case of
KALOO HAJAM & others.

Committing Officer.—Mr. F. Beaufort, joint-magistrate of Pubna.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 26th July, 1854.

Remarks by the sessions judge.—As I consider the charge of murder brought home to the prisoner No. 5, and the other seven were present aiding and abetting, the reference is unavoidable.

The acquittal of the accused on an insufficient indictment of culpable homicide was held to be no bar to their recommitment on a charge of murder.

The prisoners were first arraigned on a charge of riot attended with culpable homicide, and after the evidence of the prosecution had been taken, the law officer *of his own accord* interposed and gave it as his opinion, that the offence amounted to murder, and not culpable homicide. He was therefore called on at once to give his *futwa* as to the offence, and declaring it to be *kutlool-umud* or wilful murder, the prisoners were under the *futwa* acquitted by this court, but re-committed by the joint-magistrate on the charges exhibited in the calendar.

The circumstances were briefly as follows.

No. 10 held a *jote* in the zemindary of Ramruttun Roy (whose ryots and dependants all the parties are) and for reasons not apparent, allowed the *jote* to lay fallow. The deceased on

1854.

November 13.

Case of
KALOO HA-
JAM & others.

this applied to the Roy's naib to be permitted to cultivate the *jote*, he paying the rent, which was granted, and he sowed the land with *rai* or mustard. The crop sprung up had been cut, and was brought to the threshing floor (called in this part of Bengal a *kolah*) and had been partly threshed out when No. 10 complained to the *naib* setting forth his right to the crop as the owner of the *jote*. The *naib* decided that he was entitled to half the produce, and the deceased, as he had sown and raised the crop, to the other half. Both however were dissatisfied with this decision; No. 10 claiming the whole, except what quantity had been used for seed, and from which the crop had sprung. The *naib*, however, either would not interfere further in the matter or held his demand exorbitant. Not being able to gain his end, No. 10 then went to No. 7, the *gomashta* of No. 13, (and who again was a *sussawul* of Ramruttun's) and from him obtained the assistance of some *latteals*, or *sirdars*, to compel the deceased to give up the mustard raised on his *jote*.

They (the *sirdars*) with No. 7, then proceeded to the *kolah* and there found the deceased, with some of his relatives, engaged putting the mustard seed into sacks before it was removed. An altercation immediately ensued, No. 10, backed by the *sirdars*, and No. 7, the *gomashta*, telling the deceased it was no use his resisting. A sack was laid hold of, but taken away from the person who seized it by the deceased. No. 11 then came forward to take another sack, the deceased tried to prevent him, and, while scuffling for it with Nos. 6 and 11, No. 10 laid hold of the deceased's hand, No. 5, who was armed with a *bela* or javelin, then advanced, and thrust the *bela* into the deceased's right breast, who, reeling from the wound, fell down on the ground some *cottahs* from the threshing floor, blood pouring out of the wound. The *sirdars* then went off, but No. 6 was apprehended with a *bela* in his hand a short distance off. No. 10 remained at the threshing floor.

The above is the substance of the evidence, in the aggregate, of the witnesses numbered 1 to 9. Witness No. 10, who is a relative of the deceased, I strongly suspect deposed only to what he heard, not what he saw, as his statement varies so much from the others.

From the evidence relied on, it is evident the deceased was struggling with two others, and in their hands, and therefore quite helpless, and could neither defend himself, nor avoid the blow aimed at his breast by No. 5; and who again inflicted the wound without his assistance being called for either by Nos. 6 or 10.

This wound, and the only one, according to Mr. Ellis the sub-assistant surgeon, who held a *post mortem* examination, was the cause of his death. It had penetrated to the heart, and it is extraordinary that the deceased survived so long after it, calcu-

lating the time of the wound being given, to that of his death, nearly forty-eight hours elapsed, the latter event occurring when he was being brought on a litter to the station of Pubna for medical advice.

1854.

November 13.

Case of
KALOO HA-
JAM & others.

He had been previously examined by the mohurrir of Coxsa thannah, and who I examined on this point, but the result was very unsatisfactory. He deposed that the solemn affirmation (instead of an oath) had been repeated by the deceased, before he gave his evidence; but it will be seen that this fact was noted, or inserted after, at the top of the deposition and not in the deposition itself, and again the addition was made by direction of the darogah, to whom it (the deposition) was shewn.

I had first anticipated that it could be used as a dying declaration, but it refers to the value of the crop, and matters which never could have entered into the head of a dying man, unless questions were put to elicit the information recorded.

However, as the deposition has been attested, and was taken down before the deceased was removed from his house, I have filed it on the proceedings of this court, as corroborative of the evidence given *viva voce* by the witnesses examined, the three first being named in it. The stupidity or ignorance of the mohurrir who took down the deposition, has in a measure destroyed its value as collateral evidence; and to show how very ignorant he was of his duty, one witness (No. 11) stated he wanted to probe the wound, and was only prevented doing so by the deceased declaring, if he did it, he would kill him at once.

In addition to what has been stated above, the evidence of the first nine witnesses in the calendar establishes the following facts, or overt acts against the prisoners.

First, that No. 7 was the person who brought the *sirdars* and *luttrecals*, who wished to take, and did take some of the mustard by force from the *kolah*. Some of the witnesses say he called out "the plunder is yours, and Hurree Mohun will be answerable for any one killed or wounded."

If he really used any such expression, it would make him an instigator, but setting it aside altogether or *whatever* he may have said, there can be no doubt he was, by his presence, encouraging the rest to seize the mustard seed in the sacks, and that Nos. 5, 6 and 8 accompanied him for this purpose, the last however did not take any active part in the outrage. Nos. 9, 11 and 12 lived in a village close by, and joined No. 7 and the *sirdars* at the *kolah*. Nos. 11 and 12 laid hold of a sack each of the mustard, and when the deceased received his mortal wound, he was attempting to rescue the sack taken by No. 11, a sack of mustard was also seen in his house *after*. This is deposed to by his own witnesses; No. 9, did not take any very active part in the business.

There are some confessions in the mofussil and foudary by

1854.

November 13.

Case of
KALOO HA-
JAM & others.

Nos. 5, 6 and 7, which have been attested; but as implicating the prisoners in the murder they are of little value. All they prove is, that the three prisoners were at the spot (or thereabouts) when the deceased received his mortal wound.

This wound, as already stated, was with a spear called a *bela*, and as one was found in the hands of No. 6, I may describe the instrument. It is a long thin *bamboo* with an iron blade, pointed, and 11½ inches in length, and very like a Nubian spear or javelin. The one in court was shown to the sub-assistant surgeon, who deposed the wound *might* have been inflicted with such a weapon, and that it was a dangerous one there can be no doubt. There was no written inquest, or *sooruthal lash* drawn up after the deceased died, hence its absence from the record.

Defence of the prisoners.—All employed mooktears to defend them, and who were also Ramrutton's mooktears.

They all gave in written defences or petitions; No. 5, in his, refers to discrepancies in the evidence of the eye-witnesses, particularly as to the party with whom deceased was struggling, and the place where he was wounded. He also asserts that the blood seen on the ground was *his*, and not *deceased's*, and pointed out a wound on his own arm, regarding which a report had been made by the darogah of Fukkerabad in the sub-division of Magoorah.

It was the finding this wound on him which led to the prisoner's arrest, I examined it after the trial. It was on the fleshy part of the right arm, and inflicted, the prisoner said, by a *surkee*, that pierced through and left another wound on the inner side of the arm. The prisoner stated he was holding up his arm to defend himself, when he got the wound. But this could never have been the case as the inner wound was higher up than the one outside or towards the shoulder. I strongly suspect that if not self-inflicted, they were punctured by some one to cause a diversion in the prisoner's favor. Four witnesses deposed to seeing the wounds, and which the prisoner admitted he had received in a dispute relating to some *rai* or mustard seed.

No. 6 in his petition affirms that he was passing along when Arman Jowardar wounded Kaloo (No. 5.) and plundered Hurree Mohun's mustard. The opposite party, being apprehensive that he would give evidence, seized and brought him before the mohurriir, when he was told that if he confessed he would be made a witness, and being helpless he did so.

The prisoner examined seven witnesses, three of whom deposed that he was seized and beat, to *make him a witness*.

No. 7 pleaded an *alibi* and examined five witnesses in support, but the *alibi* broke down; only one could speak to the date, and two others heard the date from the prisoner himself. None of these witnesses were inhabitants of Chooneparrah, or Noparrah, which adjoins.

No. 8 pleaded he was in the house of a person ten *russees* from the spot, or scene of the outrage, but his witnesses knew nothing of the matter.

Nos. 9, 11 and 12 gave in a joint petition, the first and last pleading they were at home, and No. 11 that he was in the house of a neighbour. They live, as already stated, close to the spot. Their witnesses did not support their statement, and two of them deposed No. 11 had a sack of mustard seed, which he tendered in payment of a debt.

No. 10 examined seven witnesses. Three said he was at the *kolah*; and four that he was at Chunder Chung's house when the dispute occurred. Two of the latter were peadahs of Ramrutton's.

No. 13 set up an *alibi*, and it was fully proved by his witnesses, including a police jemadar, that he was with the latter, when investigating into another case, in the sub-division of Magoorah, under the joint-magistrate stationed there on the day of the outrage being perpetrated.

At the conclusion of the trial, on the usual question being put to the law officer, if wilful murder was proved against any of the prisoners, he replied he could not answer without going through the foudary proceedings. I, on this, pointed out to him the rule in Section 3, Regulation IV. of 1797, when after detaining the court for nearly a quarter of an hour, he replied according to the statement of the witnesses, wilful murder was proved against Kaloo Hajam. He was then called upon for his *futwa*, it being dusk and gave it in at 9 P. M.

In this he declares some one killed the deceased, that there was strong presumption against No. 5, but with reference to delay on the part of some of the witnesses giving evidence, and the first who complained (No. 10) not saying who wounded the deceased, *kissas* under the Mahomedan law, was barred: but No. 5 was liable to *acoobut*; and the rest as concerned (except No. 13) to *tazeer*, but that No. 7 had not given orders to kill any one, only to *loot* or plunder. No. 13 he acquitted, as his was the only defence what had been established, and none of the witnesses for the prosecution deposed to his being present, only that No. 7 was his *gomashta*.

It has been neither insinuated nor pleaded that the deceased was armed, or offered violence to any one, except holding No. 6 by the hair. All he did was to keep or try to save the mustard-seed, which he had raised with the sweat of his brow and his own seed; not one of the prisoners, except No. 10, lay or could have any right to the mustard grown on the land. Even No. 10 does not now urge his claim. Suspecting no doubt that if he did, it would only entangle him deeper in the mesh he has made for himself.

All the parties in this case are either ryots or dependants of a

1854.

November 13.

Case of
KALOO HAJAM & others.

1854.
November 13.
Case of
KALOO HAJAM & others

zemindar, whose reputation is rather notorious for having in his employ turbulent characters and *latteals*, and these, headed by his *sussauwul's gomashtha*, mortally wounded a *ryot*, who his nab gives land to (which would otherwise lie fallow and yield no rent) and this, on the threshing floor, where the grain was being separated from the chaff, *because* he resisted the lawless individuals who wanted to deprive him of the produce of his labor.

To satisfy the justice of the case, a severe example should be made, but, advertng to the fact of the prisoners being first arraigned on a charge of *culpable homicide*, to the favorable, or lenient interpretation of the Mahomedan law, by the law-officer of the court, and who sat on the trial, but whose reasons for suspecting the truth of the statements made by the eye-witnesses I do not think conclusive, nay, am rather surprised that any evidence was obtained, after the deceased's death, I beg to recommend, that No. 5, as guilty of the murder, from his inflicting the mortal wound of which the deceased died, be sentenced to imprisonment in transportation for life; that Nos. 7 and 10, as principals in the second degree, in having brought the *latteals* or *sirdars* to the *kolah*, when the deceased was wounded mortally, be sentenced to fourteen years' imprisonment with labor and irons, and Nos. 6, 8, 9, 11 and 12, for aiding and abetting in the murder, by their presence, be sentenced to seven years' imprisonment, also with labor and irons. No. 13, agreeably to the *futwa*, has been released, the other prisoners are in jail; and as the Court may wish to refer to the proceedings held on the first trial (No. 16 of the sessions for July) they are also herewith forwarded in original, and an extract from the statement No. 8, or my remarks in the case have been appended to the proceedings.

On perusal of the above remarks the Court.—(Present : Messrs. A. Dick and B. J. Colvin) recorded the following resolution No. 885, dated 20th September, 1854.

The Court direct that the sessions judge of Rajshahye, be called upon to explain how he came to disregard the course laid down in paragraph 3 of the Circular Order No. 70, dated the 14th November, 1851, and to acquit the prisoners of the charge of culpable homicide directing their release by warrant, because the evidence proved the crime to be murder. He will likewise explain, how he felt justified in convicting of murder, a person who had been acquitted on the very same evidence of culpable homicide.

In reply to the above resolution the following letter No. 16, dated 20th October, 1854, was submitted by the sessions judge.

I have the honor to acknowledge the receipt of the Court's resolution No. 885, under date the 20th September, in the case of Kaloo Hajam and others, calling upon me to explain "how

I came to disregard the course laid down in paragraph 3 of the Nizamut Adawlut Circular Order No. 70, of the 14th November, 1851, in directing the release of the prisoners by warrant, because the evidence proved the crime to be murder," and likewise, "how I felt justified in convicting of murder, a person who had been acquitted on the very same evidence of culpable homicide."

1854.

November 13.

Case of
KALOO HA-
JAM & others.

In reply to the first question, I beg to state that on a reference to the paragraph of the Circular Order quoted, it does not appear, to my humble comprehension, that I acted counter to the directions it contains.

On the law officer remarking the offence was murder, and not culpable homicide, and agreeing with him, the trial was stopped, before the defence was taken, and the law officer directed to give a *futwa* as to the nature of the offence. This he did, finding it murder, and declaring the prisoners not punishable on the charge on which they were arraigned. A proceeding was then sent, with a copy of the *futwa*, to the magistrate, and also a warrant of acquittal, as that trial in fact was concluded, and without an order for their release, the prisoners could not be arraigned on another charge.

The Court's circular of the 14th November, 1851, is silent on the subject of a warrant, but as in every trial held at the sessions and disposed of without reference, the prisoner is sentenced by a warrant, either to punishment or acquittal, there was nothing irregular in issuing the warrant of acquittal in my humble opinion. And I believe the Court have laid down, that "under *all circumstances* a sentence of conviction or acquittal must be passed upon every person committed for trial." Nizamut Reports volume V. pages 145 and 173, Beaufort's Digest, page 130.

With regard to the second query put by the Court, "how I felt justified in convicting of murder, a person who had been acquitted on the very same evidence of culpable homicide," I beg to observe, and the Court will perceive, that the *futwa* in the first trial acquitted no one, either of murder or culpable homicide. It merely found the offence, murder, and declared that, under the commitment, the prisoners could not be convicted of that offence, or of being accessory thereto. I concurred and directed their release by the issue of warrant of acquittal, in the usual form of such warrants.

The prisoners did not plead *autrefois acquit*. They were not acquitted after being put on their defence in the other trial, and, in fact, except that the warrant was (as I have just stated) one of acquittal in the usual form, they could neither urge nor plead it in their defence. I therefore proceeded with the trial, and the *futwa* convicting 8 of the prisoners, I recommended a sentence should be passed on them, their conviction, as well as the sentence to be passed, resting with the Superior Court.

1854.

November 13.

Case of
KALOO HAJAM & others.

I have not received back the proceedings on the trial, only the enclosed extract, appended to the proceedings in the first trial; and the calendars (English and Bengallee) which were enclosed in the envelope containing the Court's resolution. These I beg again to return.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) With reference to the explanation of the sessions judge, the Court remark that Circular Order No. 70, dated 14th November, 1851, prescribes that on alteration of a charge being deemed necessary, the proceedings in the trial shall at once be stopped, and the case remanded to the magistrate with the necessary directions for a fresh commitment. It is silent altogether as to passing any orders regarding the accused, nor is the precedent cited by the sessions judge in point, for it refers only to a trial quite concluded.

The course followed by that officer in this case has raised considerable doubt as to the validity of the present trial, but after maturely considering the circumstances of it, the Court are of opinion that the erroneous order of acquittal and warrant of release do not prevent their proceeding with the case. The facts had not been pronounced on as regards the guilt or innocence of the prisoners; the acquittal was simply by reason of the act proved being murder, and not the minor crime of homicide charged, in reality an acquittal on insufficient indictment, so that as far as any opinion may be said to have been expressed, it was one unfavorable to the prisoners, from which they could never have supposed that their unconditional discharge was intended.

The Court, having gone through the proceedings, concur with the sessions judge in finding the prisoners guilty of the crimes laid to their charge. The collecting of the *latteals*, the attack upon the threshing floor, the mortal wounding of the deceased, by Kaloo Hajam, and the presence of the several prisoners at the outrage, are all clearly proved. We therefore sentence them as proposed by the sessions judge. We do not deem a capital sentence in the case of Kaloo called for, as there was no premeditated determination to take life.

With reference to the acquittal by the sessions judge of Hurree Mohun Sircar, prisoner No. 13, we consider that he should have, in explanation of his acquittal, detailed more at length how he held proof of his defence (*alibi*) to be a bar to his conviction on the charge of being an accessory to the crime of riot attended with murder, which from the definition of accessoryship in Circular Order No. 8, dated 7th June, 1847, did not involve his presence on the occasion.

PRESENT :

SIR R. BARLOW, BART., AND B. J. COLVIN, Esq., *Judges.*

GOVERNMENT

versus

NOBIN GHOSE GOWALA.

Hooghly.

1854.

CRIME CHARGED.—Having belonged to a gang of dacoits.
Committing Officer.—Baboo Chunderseker Roy, deputy magistrate, under the commissioner for the suppression of dacoity, Hooghly.

November 16.

Case of
NOBIN GOWA-
LA.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 14th October, 1854.

Remarks by the officiating additional sessions judge.—The prisoner, Nobin Ghose Gowala, was committed by the deputy magistrate, under the commissioner for the suppression of dacoity, and is charged with having belonged to a gang of dacoits, under the provisions of Act XXIV. 1843. He pleads guilty to the indictment.

The prisoner was convicted on his own confessions and the evidence for the prosecution.

The evidence of two approvers convicts the prisoner of having been concerned in seven dacoities, and his abridged confession, recorded before the committing officer, sets forth that he has been associated with several gangs of dacoits, and taken part in twenty-three dacoities under different leaders.

The prisoner's detailed confession before the same officer embraces thirty-nine dacoities, proof of the occurrence of the major part of which has been furnished by the magistrates in whose several jurisdictions the affairs took place. I have no reason to doubt either the truth or voluntariness of these confessions.

The prisoner repeats his plea of guilty before this court and admits his previous confessions. I convict him of the crime charged, and recommend that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart., and Mr. B. J. Colvin.) The prisoner has confessed both before the magistrate and sessions judge, and the records shew the commission of the dacoities enumerated by him before the latter officer. We sentence him as proposed.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, Esq., *Judges*.

GOVERNMENT AND]BAEEREE BAGDINEE

versus

Hooghly.

1854.

November 16.

MOHESH BAGDEE CHOWKEEDAR (No. 5,) MUDHOO
BAGDEE CHOWKEEDAR (No. 6,) KASHEE BAGDEE
CHOWKEEDAR (No. 7,) AND JOLODHUR BAGDEE
SIRDAR (No. 8.)

Case of
MOHESH BAG-
DEE CHOW-
KEEDAR and
others.

Conviction
upheld, but
sentence pass-
ed by the ses-
sion judge mi-
tigated, under
the circum-
stances of the
case.

CRIME CHARGED.—Prisoner Nos. 5 and 6, wilful murder of Kashee chowkeedar, husband of the prosecutrix's sister; prisoners Nos. 7 and 8, privity to the above wilful murder.

CRIME ESTABLISHED.—Prisoners Nos. 5 and 6, culpable homicide and prisoners Nos. 7 and 8, privity to a culpable homicide.

Committing Officer.—Mr. C. S. Belli, magistrate of Hooghly. Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 9th August, 1854.

Remarks by the officiating additional sessions judge.—This homicide was the result of a drunken broil. The prisoners and the deceased had been drinking together and fell out on their way home. The cause of the quarrel does not appear, but it originated with and was confined to the prisoners, Mohesh Bagdee, No. 5, Mudhoo Bagdee, No. 6, and the deceased. The two former are stated to have struck the latter a blow each with a stick, but it is difficult to say, from the nature of the evidence and the unwillingness with which it was tendered, what really happened on the occasion, and when and where the assaultee died. His body was found on the following day on the banks of the Sur-suti river, washed up by the tide, with seeming marks of violence, but the evidence on this point is not clear and no *post mortem* examination was held, owing to the advanced stage of decomposition the body had attained when forwarded to the civil surgeon for dissection. There seems to have been a day's unnecessary delay in the examination of the body, after its arrival at the sudder station, it having reached Hooghly on the night of the 19th July and the surgeon's report, describing its state, being dated the 21st idem, but the circumstance is scarcely worth notice, as from the fact of the body being immersed in water for twenty-four hours, decomposition must have ensued almost immediately. The prisoners, Kashee Bagdee, No. 7, and Jolodhur Bagdee, No. 8, were present when the assault took place and admit, both before the police and the magistrate, that they saw it perpetrated by the prisoners, Nos. 5 and 6. Indeed they give the only account of the affair, such as the removal of the body, after the beating, but implicit reliance cannot, of course, be placed on their statement

as affecting the guilt of their co-prisoners. They were chowkeedars, however, and it was their bounden duty to report the outrage to the police without loss of time. The other prisoners were chowkeedars also (as was the deceased) and therefore doubly culpable in committing a violent breach of the peace, in a drunken and disorderly state.

Sentence passed by the lower court.—Nos. 5 and 6, to seven (7) years' imprisonment each with labor and irons, and Nos. 7 and 8, for four (4) years' each without irons and a fine of twenty-five (25) rupees within one month, or in default of payment to labor until the fine be paid, or the term of their sentence expire.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart., and Mr. B. J. Colvin.) We think that the facts of this case are sufficiently proved against the prisoners, but there is nothing in the circumstances of it to require such a severe punishment as has been passed by the sessions judge. It was a sudden drunken brawl without any purpose of taking life; the only feature of aggravation in it is the concealment of the offence, and this by the prisoners, who are chowkeedars. We sentence prisoners Nos. 5 and 6, to three years' imprisonment and Nos. 7 and 8, to one year's imprisonment; the labor as regards all being commutable to a fine of 25 rupees each, payable in fifteen days.

PRESENT :

SIR R. BARLOW, BART., AND B. J. COLVIN, Esq. *Judges.*

GOVERNMENT

versus

ELLAM BEARAH (No. 2.)

Jessore.

CRIME CHARGED.—Perjury, in having, on the 6th June, 1854, corresponding with 25th Joisty, 1261, intentionally and deliberately deposed under a solemn declaration, taken instead of an oath, before the joint-magistrate of Magoorah, that he recognized Janbux, Omar Khan, Sonaoollah, Bucksho and Arubdi, as defendants, and in having on the 31st August, 1854, corresponding with 16th Bhadro, 1261, again intentionally and deliberately deposed under a solemn declaration, taken instead of an oath, before the sessions judge, that he does recognise Janbux, Arubdi, Bucksho, Sonaoollah and Jeahoollah. The sessions judge then asked the prisoner the reason that he recognised Omar Khan before the joint-magistrate of Magoorah, but he could not recognise Jeahoollah, and the reason of his recognising Jeahoollah before the sessions court, and his not being able to recognise Omar Khan: upon which the defendant said he

1854.
November 16.
Case of
MOHESH BAG-
DER CHOW-
KEEDAR and
others.

1854.
November 16.
Case of
ELLAM BEA-
RAH.

The prisoner
was acquitted,
it not appear-
ing that he
wilfully per-
jured himself.

1854. recognises all, but that he identified them when they were in confusion. He was again told to point out those whom he had
 November 16. recognised: on which he pointed out Arshad, Janbux, Buckshoollah, Jeahoollah and Sonaoollah, and said that these are the persons whom he had recognised. The prisoner could neither point out Oinar Khan, whom he recognised in the foudary nor Arubdi, whom he has formerly recognised in the judge's court, but he now points out one Arshad, who was not recognised by him in either court, such statements are contradictory of each other on a point material to the issue of the case.

Case of
 ELLAM BEA-
 RAN.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. O. Toogood, magistrate of Jessore.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 11th September, 1854.

Remarks by the sessions judge.—Perjury, the crime charged is clearly proved from the evidence for the prosecution.* The statements of the prisoner are contradictory of each other on a point material to the issue of the case.

* Witness No. 1. Lalbehary Bose.
 „ „ 2. Omachurn Bose.
 „ „ 3. Chundernath Roy Moonshree.
 „ „ 4. Reazuddin Nazir.

The jury give a verdict of

guilty, in which I concur.

I sentence the prisoner to three years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart, and Mr. B. J. Colvin). The prisoner, in his defence, alleges that he did not know the names of the persons who committed the assault. He was one of the bearers who carried the palanquin in which Mohes Chukerbutty, who is said to have been robbed, was going from Cusbah to Magoorah. The prisoner identified certain of the assailants before the magistrate; before the sessions judge he pointed out other persons. He pleads that he was confused, but he was examined in the sessions court three and half months after he had been before the magistrate; and that he was altogether previously unacquainted with the parties charged with the robbery. No case of wilful perjury is, in our opinion, made out against the prisoner. It is highly probable that what he has urged in his defence is the real state of the case.

We acquit him and he must be released.

PRESENT :

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

GOVERNMENT

versus

RUTTUN SIRDAR.

Hooghly.

1854.

CRIME CHARGED.—Having belonged to a gang of dacoits. Committing Officer.—Baboo Chunderseker Roy, deputy magistrate, under the commissioner for the suppression of dacoity, Hooghly.

November 16.

Case of
RUTTUN SIRDAR.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 13th October, 1854.

Remarks by the officiating additional sessions judge.—The prisoner, Ruttun Sirdar, was committed by the deputy magistrate, under the commissioner for the suppression of dacoity, and is charged with having belonged to a gang of dacoits, under the provisions of Act XXIV. 1843. He pleads guilty to the charge.

The prisoner confessed throughout to being guilty of the charge against him.

The evidence of two approvers convicts the prisoner of having been concerned in seven dacoities, and his abridged confession, recorded before the committing officer, sets forth that he has been associated with several gangs and taken part in twenty-four dacoities under different leaders.

The prisoner's detailed confession before the same officer embraces twenty-two dacoities, proof of the occurrence of the major part of which has been furnished by the magistrate in whose several jurisdictions the affairs took place. I have no reason to doubt either the truth or voluntariness of these confessions.

The prisoner repeats his plea of guilty before this court and admits his previous confessions. I convict him of the crime charged and recommend that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) We find the circumstances detailed by the sessions judge to be established by the record, and the prisoner has confessed fully and voluntarily in both the magistrate's and sessions judge's courts. We sentence him as proposed.

PRESENT :

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

GOVERNMENT AND KOMULDAS TANTEE

versus

SOOSAREE AGOORIN (No. 1,) NUDDEARCHAND SAMUNT (No. 2,) GORACHAND SAMUNT (No. 3,) BY-KUNT JUSH (No. 4,) AND DHONA AGOORIN (No. 5.)

Beerbhoom.

1854.

November 16.

Case of
SOOSAREE
AGOORIN
and others.

One prisoner convicted of being an accomplice in murder was not sentenced capitally, the share she took in it, not being proved.

CRIME CHARGED.—1st count, theft attended with murder of Pursuno Myee Chokree daughter of Komuldas Tantee, plaintiff, for the sake of her ornaments valued at rupees 13 ; 2nd count, being accessory after the fact of the abovementioned theft with murder ; 3rd count, privity to the abovementioned theft with murder.

Committing Officer.—Mr. H. Rose, officiating magistrate of Beerbhoom.

Tried before Mr. W. Taylor, officiating sessions judge of Beerbhoom, on the 18th September, 1854.

Remarks by the officiating sessions judge.—The deceased is the daughter of Komuldas, inhabitant of Keenjurrea, aged eight years, and is stated to have been murdered for the ornaments (valued at Company's rupees 13) she was wearing on the day the occurrence took place, 9th Bhadoon, or 24th August, 1854.

The prosecutor (the father) states, on the 9th of Bhadoon, he went to the *hatt* of Hatumpore early in the morning and returned home next day, when he was informed that his child, Pursuno Myee (deceased) was missing ; that she was last seen in company with prisoner No. 1, Soosaree Agoorin, at about 8 A. M. of the 9th ; that he went with the darogah of thannah of Zulpore to prisoner's house, and ascertained from her, first, that she had seen the child fall from the bank of a tank (Coomarpeoker) into the water ; on search being made, no body was found ; on further pressing, the prisoner then stated that the body would be found in a well, near prisoner's house. On proceeding to the spot and searching, the body appeared and was recognized by him as that of his daughter. Prisoner No. 1 then took from the thatch of her house certain ornaments which were also recognized by him (prosecutor) as those worn by his child on the day she was missed, prisoner in his presence stated she had not murdered the child, but that prisoners Nos. 3 and 4 had, and after thrown the body into the well, where found. No enmity existed between him and the prisoners. He supposes the act was committed for the ornaments worn by the child.

The five prisoners pleaded *not guilty*.

Witness* No. 1, present at the inquest held by the darogah

* No. 1, Nudearchand Dass Tantee.

on the 10th of Bhadoon, proves the finding of the body, the producing the ornaments from the thatch by the prisoner No. 1,

- * No. 2, Nimae Jush.
 „ 3, Govind Dass Tantee.

and the statement made by her. Witnesses* Nos. 2 and 3, corroborate this evidence.

- † No. 4, A. J. Sheridan, M. D.

Witness† No. 4, the medical officer in charge of this station, examined the body, and gave his opinion that the child had met with a violent death

- ‡ No. 1, Nudarchand Dass Tantee.

- 2, Nimae Jush.
 3, Govind Dass Tantee.
 „ 10, Bukernath Dutt.
 „ Bholanath Dass Tantee.
 „ Ruman Sur.
 „ 13, Nizabut Hossein.
 „ 14, Nusiroaddeen Mahomed.
 „ Nilcomul Dass.
 „ Beneemadhub Roje.
 „ Radhamadhub Dey.
 „ 18, Gopal Sen.
 „ 19, Mohamed Chand.
 § 21, Matunginee Chokree.

which was caused by strangulation, the marks on the neck as also the protruding of the eyes and the other indications, denoted this.

Witnesses‡ Nos. 1, 2, 3, 10 to 19, prove the several statements made by the prisoners Nos. 3, 4 and 5, in the mofussil and before the magistrate.

Witness§ No. 21, a child about seven years old, statement was taken without oath, she

merely proves her being with the deceased when enticed away on the morning of the 9th Bhadoon by prisoner No. 1, who took her (deceased) towards prisoner's house.

- || No. 22, Bisto Agoorin.
 „ 23, Murmo Tantee.

Nos. 22 and 23|| prove seeing the deceased with prisoner and corroborate the statement of the child, witness¶ No. 21.

- ¶ No. 21, Matunginee Chokree.

Prisoners, one and all, deny having committed the murder, they implicate one another in their several statements, which, in the opinion of the court, should not have been taken as confessions and denominated as such by the committing officer, but rather defences entered by all, against the 1st charge in the indictment, i. e., the actual murder.

- * Bukernath Dey Vakeel.
 Nobokant Dey.
 Bukernath Dey.
 Oodhubchunder Dhur.
 Ramnath Saha.
 Sunker Saha.

The jury* after an attentive hearing of the evidence for the prosecution and the witnesses for the defence, brought in a verdict of guilty against prisoners Nos. 1 and 2, of the 1st

charge, and prisoners Nos. 3, 4 and 5, guilty of the 3d charge.

The court, having weighed the evidence and given every consideration to the case before it, is of opinion that the prisoners, one and all, are implicated in this most cruel murder; that prisoner No. 1, from her own statement, which she does not contradict before this court, was present when the crime was committed, but she does not admit her having actually strangled the child, or enticed her to her house; the murder and disposing

1854.

November 16.

Case of
 SOOSARRA
 AGOORIN
 and others.

November 16.

Case of
SOOSAREE
AGOORIN
and others.

of the body, she avers, was executed by prisoners Nos. 3 and 4, who in their statements declare they were absent a short distance at work in an indigo stubble, and heard on their return home in the evening from prisoner No. 2, husband of prisoner No. 1, that the latter had murdered the child Pursuno Myec; a like statement is given by prisoner No. 5, Dhona Agoorin. Setting aside these statements of the prisoners, who are nearly connected with each other and reside within the same enclosure, the court considers there is sufficient evidence to bring home to the parties the charges of which they have been found guilty by the jury: prisoner No. 1, Soosaree Agoorin and No. 2, Nudarchand Samunt are recommended to suffer the severest penalty of the law,* as perpetrators of a wilful and cruel murder, and the other three prisoners to hard labor in irons and banishment for the period of ten years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) The sessions judge has convicted prisoners Nos. 1 and 2, husband and wife, of wilful murder, and recommends that capital sentence be passed upon them. The evidence against prisoner No. 1, Soosaree Agoorin, arises out of her confession, which amounts to complicity. She was suspected by the prosecutor in consequence of her having told the darogah that the deceased child Pursuno Myec had gone to a tank for a certain purpose and fallen into it, the tank was searched, but no corpse was found. The prisoner was again questioned when she confessed that her husband No. 2, and prisoners Nos. 3 and 4, Gorachand, his brother, and Bykunt Jush, were present at the time of the murder by Gora Chand No. 3, of the child for its ornaments, which were removed by No. 3, and placed in the thatch and the body was afterwards carried off by him and No. 4.

By her own confessions Musst. Soosaree saw the murder committed, and she pointed out the corpse, and the ornaments which had been concealed; she is a young woman herself, and it is not probable that she alone did the deed; the child Pursuno Myec was about nine years of age, and could not have been easily strangled by one person. Her participation in the actual commission of the deed is not proved, though by her confession she is clearly an accomplice. We could not, except on the strongest grounds and unless the murder could be accounted for in no other way than in having been committed by her, sentence the prisoner under the circumstances of the case capitally. The ends of justice will, in our opinion, be satisfied with a sentence short of the last penalty of the law; we therefore sentence the prisoner to imprisonment for life with labor suited to her sex.

With reference to the prisoners Nos. 2, 3 and 4, the calendar contains no evidence, further than that afforded by their confessions, which exhibit their knowledge of the murder having

been committed, as they allege, by the prisoner Soosaree ; convicting them of privy to it, we sentence them to seven years' imprisonment with irons and labor. Against the remaining prisoner No. 5, Dhona Agoorin, there is no sufficient evidence to warrant conviction, and she denies throughout, she is acquitted and must be released.

1854.
November 16.
Case of
SOOSAREE
AGOORIN
and others.

PRESENT :

A. DICK AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT

MUDDHOO CHUNG (No. 2.)

Hooghly.

CRIME CHARGED.—Having belonged to a gang of dacoits.
Committing Officer.—Baboo Chunderseker Roy, deputy magistrate under the commissioner for the suppression of dacoity.
Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 13th October, 1854.

1854.
November 17.
Case of
MUDDHOO
CHUNG.

Remarks by the officiating additional sessions judge.—The prisoner, Muddhoo Chung, was committed by the deputy magistrate under the commissioner for the suppression of dacoity, and is charged with having belonged to a gang of dacoits, under the provisions of Act XXIV. 1843. He pleads guilty to the indictment.

The prisoner
was sentenced
to transportation
for life.

The evidence of an approver Bindrabun Chung, witness No. 1. witness convicts the prisoner of having participated in five dacoities, and in his abridged confession, recorded before the committing officer, sets forth that he has been associated with several gangs of dacoits and concerned with them in twenty dacoities.

The prisoner's detailed confession before the same officer embraces twenty dacoities, proof of the occurrence of more than two-third, of which has been furnished by the magistrates in whose several jurisdictions the affairs took place. I have no cause to doubt either the truth or voluntariness of these confessions.

The prisoner repeats his plea of guilty before this court, and admits his previous confessions. I convict him of the crime charged and recommend that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) We convict the prisoner on his own confessions, corroborated by the evidence of Beeshoo approver as regards one case, and by the fact of the occurrence of the dacoities detailed by the prisoner, as shewn by the records furnished by the several magistrates. We sentence him as proposed by the additional sessions judge.

PRESENT :

A. DICK AND B. J. COLVIN, Esqs., *Judges*.GOVERNMENT AND SHEIKH ARAMOOLLAH
*versus*HARAN MULLICK (No. 7,) PURESH MULLICK (No 8,)
KHADEM MULLICK (No. 9,) AND RUFFEE MUL-
LICK (No. 10.)

East Burdwan. CRIME CHARGED.—Wilful murder of Tarson Beebee.

1854.

Committing Officer.—Mr. A. Abercrombie, officiating magis-
trate of East Burdwan.November 17. Tried before Mr. J. H. Patton, officiating additional sessions
judge of East Burdwan, on the 25th of August, 1854.Case of HARAN MUL-
LICK & others. *Remarks by the officiating additional sessions judge.*—The
prisoners are charged with the wilful murder of Tarson Beebee,
under the following circumstances, and plead *not guilty* to the

The prisoners indictment.

The prisoners
accused of
murder were
acquitted, the
evidence for
the prosecu-
tion being con-
sidered insuffi-
cient for their
conviction.

The prosecutor was a servant in the employ of the prisoner Puresh Mullick No. 8, and during his servitude contracted an intimacy with his master's sister, Tarson Beebee, who was a widow. This intimacy ripened into attachment on the part of Tarson, and when the prosecutor was discharged the service for his presumption in aspiring to the favor of one so infinitely his superior, she followed him to his home. A *neka* marriage was the result of this elopement, to the unmitigated and undisguised anger of the members of Tarson's family. About twenty days after the consummation of the marriage, i. e., on the night of the 24th June last, the prosecutor and Tarson slept in their house with closed doors. A little after midnight they were woke by a thundering at the door which at first resisted, but soon yielded to the blows applied from without. On this, the assailants rushed in and the prisoner, Haran Mullick No. 7, literally hewed Tarson to pieces with an axe, the prisoner, Puresh Mullick No. 8, ordering him to kill her, the prisoner, Khadem Mullick No. 9, holding up a lighted rag to indicate clearly the unfortunate victim at the time of slaughter, and the prisoner Ruffee Mullick No. 10, standing by with the hatchet used in forcing the door. The prosecutor escaped by climbing up to the roof and conceal- ing himself behind some dry leaves on the cross beam of the thatch. The prisoners, Puresh and Khadem are brothers and the prisoner, Haran, their nephew.

Such are the alleged particulars of this cold-blooded and in-
human murder and the persons marginally* noticed, depose to

* Sheikh Aramoollah the prosecutor.
Gohi Sheikh, witness No. 1.
Abed Beebee, witness No. 2.

the facts recorded. The pre-
sumptive evidence against the
prisoners consists of the testi-
mony of the four persons indi-

cated in the margin,* the first of whom states that the four

1854.

* Chand Mullick, witness No. 3.
Jitee Sheikh, witness No. 4.
Johirudin Sheikh, witness No. 5.
Naim Sheikh, witness No. 6.

prisoners were present at the prosecutor's house on the night of the murder, the prisoner Haran Mullick with an axe and the prisoner Ruffee Mullick

November 17.

Case of
HARAN MUL-
LICK & others.

with a hatchet, the second that these two prisoners so armed drove him off when he challenged them, on hearing the disturbance in the prosecutor's house, the third that two persons armed with clubs attacked him while proceeding to the prosecutor's house to ascertain the cause of the noise going on there, and the fourth that he heard Tarson Beebee supplicate the prisoner, Haran by name, not to kill her, from an adjoining house.

The civil surgeon describes the injuries, exhibited on the body of the unfortunate woman, in the following appalling terms. "The back part of the skull was entirely cut through, the brain being also extensively cut. The wound extended from the back part of the head to the face, dividing the left ear. The left hand was also cut off. There was a severe wound on the back of the left shoulder, also a severe, deep wound above the left collar-bone. The wound on the head alone would have caused speedy death."

The prisoners deny the charge and set up the plea of *alibi* which they fail satisfactorily to prove.

The *futwa* of the law officer convicts the prisoner, Haran Mullick No. 7, of the wilful murder of Tarson Beebee, and declares him liable to *kissas*. It also convicts the prisoners, Puresh Mullick No. 8, Khadem Mullick No. 9, and Ruffee Mullick No. 10, of being accomplices in the murder, and declares them liable to discretionary punishment by *acoobut*.

With the moral conviction on my mind that the prisoners compassed the unfortunate woman Tarson Beebee's death, in a savage and cruel manner, I regret to dissent from the finding: but I do so on account of some points in the evidence which appear to me defective and concomitant, a circumstance involving much improbability. As regards the former, in the first place, there is no mention made of any of the prisoners in the original information communicated to the police of the murder, a fact very essential to the validity of the evidence brought in support of the proof of recognition and identity. Secondly, there is a discordance in the several accounts of the transaction given by the eye-witnesses, as for instance, the prosecutor states that the light by which the murder was committed was thrown in through the aperture in the door, caused by the blows inflicted from without, whereas the witness No. 1 deposed before the magistrate that the prisoner, Haran Mullick, took in the lighted torch. Again, the witness No. 2 omitted altogether to name the prisoners Haran, Puresh and Ruffee, in her examination before the

1854.

November 17.

Case of
HARAN MUL-
LICK & others.

darogah, and while the witnesses Nos. 1 and 2 affirm that during the murder the prisoner Khadem held the torch, the witness No. 3 states that it was the prisoner Ruffee who carried it. There are other discrepancies of a minor order which it is unnecessary to notice. And with reference to the latter, the escape of the prosecutor under the circumstances stated. The prisoners were as furiously exasperated against him as against their female relative, he was the author of their dishonor and the object of their revenge, he was in their power, in the same hut in which they had murdered his wife, with the same means at their disposal for murdering him, and yet he escapes, though it is impossible, from the construction of the cabin in which the murder was committed, that he could have lain concealed above for one moment, as alleged by him.

Though the circumstances I have detailed make in favor of the prisoners, yet the probabilities are all against them. The exciting causes to vengeance are unmistakably disclosed by the trial, and the result cannot but raise a strong presumption of the prisoners' criminality; but the Court will judge for themselves. Doubts have suggested themselves to my mind, and in a case involving life and death, I have considered it my duty to expose them prominently. I cannot consider the prisoners guilty in the eyes of the law, and am constrained to recommend their release.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.)

Mr. A. Dick. The evidence of the guilt of the prisoners, as charged, consists 1st, of the testimony of the prosecutor himself; 2ndly, of his brother and his mother. These all testify as eye-witnesses of the murder, and enter into details. Their evidence cannot however be relied upon. The prosecutor deposes that he and the deceased were sleeping in his house, and in the night were awakened by a hammering at the door; that he went to the door to prevent its being broken open; that one of the prisoners told him to desist; that he should be first murdered and then his wife; that seeing he could not prevent their entry, he climbed upon a shelf, or loft, and remained concealed, while the wife was being murdered, seeing every particular. There is no proof however that such a shelf or loft existed in the house, which could afford concealment for a man; and even if there had been, as the murderers were sure of the prosecutor being in the house, there being no other door or opening except that by which they entered, and as they were equally as exasperated with him, it is incredible that they did not search for, find and murder him, for there is no proof that they were disturbed in their murderous attack. The testimony of the prosecutor is therefore worthless. The testimony of the brother is in like manner utterly worthless. He testifies that he saw the murder com-

mitted, and details the particulars and declares he saw it from within a ruin or deserted house, through the door-way of the prosecutor's house, where it was perpetrated: yet on reference to the plan of the spot no such ruin or deserted house appears to exist! The first and last depositions of the mother are so completely at variance, that no trust can be placed on her testimony.

The testimony of the other witnesses to the prosecution, is only corroborative of the testimony of the prosecutor, his brother and mother, and proves no more than that some of the prisoners were seen near prosecutor's house at the time of the attack. It is by no means however satisfactory, and when the principal evidence has proved so utterly worthless, cannot be considered of much weight. I would therefore acquit the prisoners and order their release.

Mr. B. J. Colvin.—It also appears to me that the prisoners must be acquitted in this case, for I consider the evidence against them to be very suspicious. There is in the first place, no satisfactory explanation of the escape from their vengeance of the prosecutor himself, whose life, if his story be true, they were as anxious to take as that of the deceased. They knew that he was inside the house, which, being a small one, offered no sufficient place of concealment. Again prosecutor refused to mention the prisoners' names until the darogah came, this might appear only common prudence, on his part, but one witness, Chand Mullick, declares that although he recognized the prisoners, he kept silence from the same motive. It is unlikely that he and the other witnesses, Gohi Shaikh and Abed Beebee, should thus act in concert to mention no names, when the first impulse would have been to proclaim the offenders. The difference in Abed Beebee's depositions, of where she was sleeping on the night in question, according to one story at her son's, the prosecutor, and to another at Chand Mullick's, throws discredit on her evidence. There is also a remarkable discrepancy as regards the exclamation said to have been uttered by the unfortunate deceased. She is said, according to one version, to have appealed to the mercy of Haran as she had cherished him in childhood, whereas she was very considerably younger than he, and according to another version to have, in order to save herself, told where the money, which he sought, was; altogether the impression derived from a very careful consideration of the evidence is, that it is not trustworthy. I concur with Mr. Dick in acquitting the prisoners.

1854.

November 17.

Case of
HARAN MUL-
LICK & others.

PRESENT :

A. DICK AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT AND SUMEE NUSHA

*versus*BAROOKHAH NUSHA (No. 9,) RUHUMUTAH NUSHA
(No. 10,) SOOBRATEE PEADAH (No. 11,) DOOLLUB
ALIAS DIEMOOLLAH MUNDUL (No. 12, APPELLANT.)

Rungpore.

1854.

November 17.

Case of
DOOLLUB
aliasDIEMOOLLAH
MUNDUL.Attention
drawn to dis-
tinction be-
tween neglect
of duty and
privity to an
offence.

CRIME CHARGED.—Nos. 9, 10, 11, 1st count, murder of Khurdee, the father of the prosecutor; 2nd count, culpable homicide of the said Khurdee, the father of the prosecutor; No. 12, 1st count, being an accomplice and aiding and abetting in the commission of the said crime; 2nd count, being an accessory both before and after the fact to the commission of the said crime.

CRIME ESTABLISHED.—Nos. 9 and 10, culpable homicide and Nos. 11 and 12, being accomplices and aiding and abetting in the commission of the above crime.

Committing Officer.—Mr. R. H. Russell, joint-magistrate of Bograh.

Tried before Mr. G. U. Yule, officiating sessions judge of Rungpore, on the 20th July, 1854.

Remarks by the officiating sessions judge.—Kubeer Sirdar had obtained a decree against Khurdee, the deceased father of prosecutor, in the Potnitollah moonsiff's court, and took out execution against person and property. On the morning of the 19th January last, Soobratee, prisoner No. 11, the peadah entrusted with the warrant against deceased's person, proceeded to his house, accompanied by Barookhah, prisoner No. 9, and Ruhumutah, No. 10, sons of the decree-holder, and Doollub, prisoner No. 12, his agent. Deceased and his son both escaped from the house on the approach of these persons, the former going to Bewaz Mundul's, witness No. 4, about two or three *russees* off, and the prisoners having followed him there, No. 12 ordered Nos. 9 and 10 to bring him out of the eastern hut into which he had gone. These two entered the hut and after a short time came out, supporting the deceased by the arms while his legs were dragged along, and in this way he was brought in a speechless state to the outer yard, where, on being let go, he rolled over and blood was seen issuing from his mouth, the prisoners went away and deceased's son, the prosecutor and wife, witness No. 5, carried him to the bank of an adjoining *nulla*, where he soon after expired. The prisoners by promising to give up the decree and kistbundee, to pay 10 Rs. for the funeral expenses and to remove the attachment of the property, which had partly been put in force by the sale ameen and his peadahs, while the above occurrences were taking place, prevented any notice being

1854.

November 17.

Case of
DOOLLUB alias
DIEMOOLLAH
MUNDUL.

given at the thannah and the body was buried the same evening, but the promises not being fulfilled, deceased's son six days afterwards complained, when the body was dug up and forwarded to the station, where, from the evidence of the medical officer, it appeared that deceased had met with a violent death, for two of his ribs, the third on each side, were broken, the soft parts over the whole of the ribs were contused, the lungs were inflated and congested with blood and a small quantity of blood had also extravasated into the cavity of the chest. The medical officer was also of opinion that these injuries were caused most probably by heavy pressure, though it is possible that they were the effect of blows. The above facts are established by the evidence of witnesses, Nos. 2, 3 and 4. Two of these witnesses, Nos. 3 and 4, also state that the peadah, prisoner No. 11, struck the deceased when lying in the yard several blows with a *lattee*, but from witness No. 3's account, it would appear that the peadah under the impression that deceased was shamming, poked rather than struck him. Witness, No. 4, is the only one who states that he heard a sound of scuffling inside the house, when prisoners, Nos. 9 and 10, went in to bring out the deceased, he was nearer than any of the other witnesses, two of whom, Nos. 1 and 3, were about 2 *russees* off, and No. 2 was at the opposite side of the inner yard. All the witnesses however declare that deceased made no sound when in the hut with prisoners, Nos. 9 and 10.

The remaining two eye-witnesses mentioned in the calendar, Nos. 5 and 6, cannot be depended on; No. 5, widow of deceased, appeared to answer questions almost at random, and the latter could not have seen what she says she did from the spot on which she alleges herself to have been.

The witnesses, Nos. 7, 8 and 9, are the sale ameen of the moonsiff-ship and his peadahs, who on going away after attaching deceased's property, saw him lying senseless in the yard of Bewaz Mundul, his face uncovered and no blood or marks of blood about him. The ameen stated before the magistrate that Bewaz Mundul told him, prisoners, Nos. 9 and 10, had pulled deceased out of the house, here he omitted this circumstance until asked, when he allowed that Bewaz Mundul had so spoken, but he had forgotten it.

The prisoners' defence is, that deceased was a sickly old man and died a natural death. There is no doubt that the deceased was weak and sickly, and his being so would render him more liable to injury from violent treatment, but would not account for the broken ribs, &c. The prisoners also insinuate that the case has been got up by Bewaz Mundul out of spite against them, but this is not in any way established, on the contrary Bewaz assisted the prisoners in concealing the case at first and was sent in by the police as a defendant and not a witness; prosecutor's son and the village chowkeedar were also defendants, and the latter,

1854.

November 17.

Case of
DOOLUB
alias
DIEMOOLLAH
MUNDUL.

who was present with Bewaz Mundul, when the occurrence took place, ought, I think, to have been made a witness of, or committed to the sessions, according to Circular Order No. 32 of the 5th November, 1849, with the principals, but the magistrate has sentenced him to six months' imprisonment for concealing the crime.

The numerous witnesses called by the prisoners proved nothing in their favor, witnesses, Nos. 13 and 14, go very much against them, as it shows that the villagers when called to the funeral were on the point of going away without attending it, on account of the suspicious circumstances they observed, until Bewaz Mundul and deceased's son assured them all was right. What the suspicious circumstances were, they would not fully declare, except that the body was lying outside on the dry water-course, and that a peadah had been out that day after deceased. They, as well as the witnesses for the prosecution, were evidently afraid to tell all they knew against the sons and agent of Kubeer Sirdar.

It is very difficult to say how the injuries were inflicted on deceased, no one was inside the hut, and he himself made no noise, but that he met his death from the violent treatment received from prisoners, Nos. 9 and 10, who were ordered to bring him out by No. 12, there can, I think, be no doubt. No. 11 does not appear to have taken part at all either by word or deed, for, as stated above, I think the allegation that he struck deceased is not altogether to be believed, but he was present and made no effort to stop the illegal and violent proceedings of the agents of the decree-holder and must, therefore, be considered an accessory, though not to such an extent as prisoner, No. 12.

The law officer convicted Nos. 9 and 10 of culpable homicide, and Nos. 11 and 12 of being accomplices and aiding and abetting therein, and I concurred and sentenced them as mentioned.

Sentence passed by the lower court.—Nos. 9 and 10, to be imprisoned with labor and irons for seven years each, No. 11 for three years without irons and to pay a fine of 50 Rs. in lieu of labor, and No. 12 for five years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The evidence of the medical officer proves that the deceased died from the effects of violence. The appellant (No. 12) is shown to have instigated it. We therefore reject his appeal.

We remark that the Circular Order No. 32 of 5th November, 1849, cited by the sessions judge, is only in force in the Western Provinces. The course pursued by the magistrate with reference to the chowkedar was correct. See Nizamut Adawlut Reports for April, of this year, pages 517 to 522. Had he considered the charge of privacy proved against him, he would of course have committed him.

PRESENT:

H. T. RAIKES, Esq. *Judge.*
J. H. PATTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

KENKAROO NOSHYA (No. 3.)

Rungpore.

CRIME CHARGED.—Wilful murder of Nydya, his wife, on the 18th July, 1854.

1854.

Committing Officer.—Mr. A. W. Russell, magistrate of Rungpore.

November 17.

Tried before Mr. G. U. Yule, officiating sessions judge of Rungpore, on the 11th October, 1854.

Case of
KENKAROO
NOSHYA.

Remarks by the officiating sessions judge.—On the 19th July last, the prisoner, Kenkaroo No. 3, reported at the thannah that the preceding day he heard from Boodoo, witness No. 1, that his, the prisoner's wife, was murdered, and that on going home he found her dead with her throat cut, and that he suspected one Bedeng, with whom he had a quarrel about some land. His deposition to that effect was taken, and the darogah proceeded to the spot, held the usual *sooruthal*, sent in the body, and on the 21st reported that in consequence of what prisoner's uncle, Sanjoo, witness No. 2, had said, prisoner had acknowledged that he himself had murdered his wife, and his confession was accordingly taken in detail to the following effect. He stated that he had, on the 18th July, been working in the fields with his younger brother; that a disease, called *batiek*, with which he had been afflicted for about a year before, which seized him about once a month for two or three hours at a time and made him, it is implied, though not clearly stated, ignorant of what he did, when under its influence, had attacked him when at work; that he went home and desiring to have connection with his wife, the deceased, who appears to have been lying down in one of the huts, got on her person, and she being unable or unwilling to admit his embrace, for by his own statement she had not arrived at puberty, he cut her throat. Before the magistrate, he confessed to the same effect, with the important exception that he made no mention of the direct cause assigned in his thannah confession for the perpetration of the crime, merely saying that on being attacked with the disease he was subject to, he went home and cut his wife's throat.

Prisoner convicted of the wilful murder of his wife sentenced capitally. The plea of insanity set up in defence was not proved.

On the trial he denied the charge, alleging that his head

* So in the vernacular and my notes, but a mistake for Boodoo.

turns when the disease attacks him, that Bedeng* went to get a light in his house and told

1854. him and Sanjoo, witness No. 2, of the deceased being dead and he rejects his confessions.

November 17
Case of
KENKAROO
NOSHYA.

* 1 Boodoo Noshya.
2 Sanjoo Noshya.

from the direction of his own, one field distant, in the afternoon of the day of occurrence, and said fire had fallen on his head, that they went to his house, and found deceased lying dead there with her throat cut, a quantity of blood on the ground but none then flowing, and the knife produced on the trial lying at her side, that prisoner said he had returned from the fields and found his wife in the condition described.

Witnesses, Nos. 1 and 2,* the latter the uncle of prisoner, prove that prisoner came to their house

3 Beegoo Noshya.
5 Juggunnath.
7 Hasil.
8 Kanohea.

Witnesses, Nos. 3, 5, 7 and 8,† attest the prisoner's inofussil confession, none of them can write, and they are uncertain of the day on which the confession was made, and No. 8, whose evidence was taken on the 2d day of trial, states that he did not hear the prisoner assign the direct cause mentioned above which induced him to commit the murder.

‡ 1 Boodoo Noshya.
2 Sanjoo Noshya.
3 Beegoo Noshya.
§ 4 Dr. J. R. Walter.

Witnesses, Nos. 1, 2 and 3,‡ prove the finding of the body with the throat cut. Witness, No. 4,§ the surgeon, was unable to examine the body from its ad-

vanced state of decomposition.

9 Attaoollah.
10 Ashmut Ullah.
11 Buran Ullah.

Witnesses, Nos. 9, 10 and 11,|| prove the prisoner's confession before the magistrate, but two of them in their examination be-

fore the said confession was read to them, state that prisoner did assign his reason above mentioned for the act, and they cannot satisfactorily explain why such reason is not mentioned in the confession, which is attested by the magistrate.

¶ 13 Poosoo Bewa.
14 Doolye Bewa.

The evidence of the other witnesses, Nos. 13 and 14,¶ for the prosecution, the former, the mother of prisoner, absent at the time of the occurrence, and the latter, the mother of deceased and residing some distance off, need not be alluded to now. The above is the sole evidence that a murder was committed, and that prisoner was the perpetrator of it. The witnesses to the *sooruthal* prove the fact of a murder, which indeed is not denied by the prisoner or any one else. That the prisoner was the murderer is not proved, except by his own confession to the police and the magistrate. The witnesses to the former are certainly not the best of their kind, they do not seem to have a very clear recollection of particulars connected with the confession, but still I can see no reason for disbeliev-

1854.

November 17.

Case of
KENKAR
NOSHYA.

ing their statement that prisoner did voluntarily confess the murder of his wife to the darogah. Every point therein agrees with his subsequent confession to the magistrate, with the one important exception noted above, and no cause for suspecting its genuineness appears from any other circumstances in the case. The confession before the magistrate too, I see no reason to doubt was voluntarily made, in spite of two of the witnesses to it having stated that the prisoner acknowledged himself more guilty than the written confession itself shows he did. The witnesses acknowledge they saw the confession written down, heard it read over afterwards and signed it, and they recognized their signatures. There is no circumstantial evidence, except the

- * 1 Boodoo Noshya.
- 2 Sanjoo Noshya.

fact of the prisoner telling witnesses, Nos. 1 and 2,* that fire had fallen on his head and such

a phrase, meaning only that a great misfortune had befallen him, cannot be held to imply of necessity that he had any hand in his wife's death. The prisoner himself, though he now denies his confessions, does not assert that they were extorted from him, his mother, uncle, mother-in-law and neighbours make no accusation either of that kind, and do not attempt to insinuate that any person but the prisoner committed the murder, they seem tacitly to admit his guilt and endeavour to excuse him on the ground of insanity. For these reasons, the law officer concurred with me in believing the prisoner's confession that he was the murderer of his wife.

It is now necessary to consider the plea of insanity. Prisoner, for about a year past has, according to the witnesses, been afflicted with *batick rog*, that is, literally, flatulency, but in this case a kind of hypochondria, according to his mother, witness

† 13 Poosoo Bewa. No. 13.† This disease attacked him occasionally and lasted for four or five days, during which he used to beat her and his brother, and when on recovery he observed their sulkiness and

- ‡ 1 Boodoo Noshya.
- 2 Sanjoo Noshya.
- 7 Haail.
- 14 Doolye Bewa for prosecution.
- 3 Beegoo.
- 8 Kanchea.
- 15 Kenkar.
- 17 Allee.
- 18 Sadulla.
- 19 Sabaz for defence.

was told the cause, he said he knew nothing about it. None of the other witnesses‡ (his brother, witness No. 12, could not be examined from not understanding the import of the oath) had ever seen him under the influence of this disease, they were only told by his mother that prisoner beat her when he had the disease, they state that he

was exceedingly passionate, getting into a violent rage when any thing annoyed him, that he went about alone, did not like talking, &c. they call him a "*pagul*" or half a "*pagul*" or

1854. "boura." When in jail, he was seized, or pretended to be so, with an attack of the disease, and sent to the hospital, where he remained for altogether thirty-two days, the civil surgeon, witness No. 4,* deposes that he considers the prisoner's madness feigned, he was violent at first but on being tied and fed on a low diet, and threatened with punishment if he made a disturbance, he very soon became quiet. On the first day of trial, when required to plead, he did so at once; on the second day, when asked what he had to say in defence, he would not speak, made circles in the air with his hand and other gesticulations, stopping suddenly and becoming quiet, and after each stoppage, casting a rapid glance at the law officer and myself, which said quite plainly, what do you think of that; after being once or twice told that an answer was required, he gave it slowly and hesitatingly, as if apparently the act of recollection required an effort. He is certainly, as stated by the civil surgeon, a person of a very low grade of intellect, but there is no reason whatever to believe that he is or has been at any time in such a state as to be incapable of judging between right and wrong, unless his mother's account is credited, and I disbelieve it, for had he been in such a state for any number of times for four or five days together, as she says, some of the neighbours must have been personally cognizant of the fact. His conduct after the occurrence too, shews that he was perfectly aware that he had committed a crime, his speech to witnesses, Nos. 1 and 2,† his statement to them that he found his wife lying dead on returning from the fields, his reporting the occurrence himself next day at the thannah, and accusing a person with whom he had a quarrel, and the fact that the police did not suspect him until witness, No. 2, mentioned what he had said, cannot be reconciled with the idea of his insanity. The law officer‡ convicted him of the charge and declared him liable to *tazir*, *kissas* and *deeyut* being barred by the suspicion of insanity. I concur in the conviction. Had the prisoner in his foudjary confession assigned the same cause for the murder, as he is said to have done in the mofussil, I should have felt myself compelled to recommend the infliction of a capital sentence; as the two confessions differ however on this point, and that taken before the magistrate is the most trustworthy, and as there is no other evidence against him but that confession, it must be taken as a whole, and he must be allowed the benefit of his own statement that he killed his wife without any reason while under the influence of a disease, which temporarily affected his mind. This excuse though utterly unsupported may be permitted to bar a
- November 17. Case of
KENKAROO
NOSHYA.
- * 4 Dr. J. R. Walter.
- † 1 Boodoo Noshya.
2 Sanjoo Noshya
- ‡ The *futwa* of the law officer.
Opinion and recommendation of
the sessions judge.

capital sentence, but no more, and I beg therefore to recommend that he be sentenced to imprisonment for life with labor and irons.

1854.

November 17.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) We concur with the sessions judge and the *futwa*, in convicting the prisoner of the crime of murder, which is fully proved by his own admissions in the mofussil and before the magistrate.

Case of
KENKAROO
NOSHYA.

With reference to the plea of insanity set up by him, and the remarks of the sessions judge, recommending the infliction of a mitigated sentence, in consequence of the prisoner having stated, in his second confession, that he was at the time under the influence of a disease, which temporarily affected his mind, we would remark that it is hardly necessary to tell the judge that unless the prisoner's mind was so affected that he could not distinguish between right and wrong, the mere effect of bodily disease, in irritating his temper, cannot be regarded as forming any sufficient ground for mitigation of punishment in a crime of this nature. The medical evidence in this case and the facts on record leave no doubt in our minds as to the perfect sanity of the prisoner, the most has been made by the witnesses of some bodily ailment, under which the prisoner has occasionally suffered, to make it appear that his intellects were temporarily affected by the disease, but their account only produces a conviction that the prisoner is a man of savage and irascible temper, which he keeps under little or no restraint, when suffering from bodily ailment; further than this, we give no credit to their statements and agree with the sessions judge that the prisoner's plea of mental aberration is "wholly unsupported."

Considering then that this atrocious crime must have been committed by him, when in the full possession of his senses, and discloses no single extenuating circumstance to plead in his behalf, we must allow the law to take its course and sentence the prisoner to suffer death.

PRESENT:

A. DICK AND B. J. COLVIN, Esqs. *Judges*

GOVERNMENT

versus

Hooghly. MODHOO BAGDEE ALIAS KOLOO MODHOO BAGDEE.

1854.

CRIME CHARGED.—Having belonged to a gang of dacoits.

November 17.

Committing Officer.—Baboo Chunderseker Roy, deputy magistrate, under the commissioner for the suppression of dacoity, Hooghly.

Case of
MODHOO BAG-
DEE alias Ko-
LOO MODHOO
BAGDEE.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 14th October, 1854.

Remarks by the officiating additional sessions judge.—The prisoner, Modhoo Bagdee alias Koloo Modhoo Bagdee, was committed by the deputy magistrate, under the commissioner for the suppression of dacoity, and is charged with having belonged to a gang of dacoits, under the provisions of Act XXIV. 1843. He pleads guilty to the indictment.The prisoner
was sentenced
to transporta-
tion for life,
as having be-
longed to a
gang of da-
coits.

* Gopall Dooby, witness No. 1.

The evidence of an approver* witness convicts the prisoner of having been concerned in three dacoities, and his abridged confession, recorded before the committing officer, sets forth that he has been associated with several gangs of dacoits and taken part in fifteen dacoities under different leaders.

The prisoner's detailed confession before the same officer, embraces fifteen dacoities, proof of the occurrence of the major part of which has been furnished by the magistrates in whose several jurisdictions the affairs took place. I have no reason to doubt either the truth or voluntariness of these confessions.

The prisoner repeats his plea of guilty before this court and admits his previous confessions. I convict him of the crime charged and recommend that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The prisoner confirms his former confessions, at the trial before the additional sessions judge, and admits that the evidence of the approver witness, who deposes to the prisoner having been with him at three dacoities, is true.

The Court, therefore, convict him of the charge, and sentence him as recommended by the additional sessions judge.

PRESENT:

H. T. RAIKES, Esq., *Judge.*
J. H. PATTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

MORAD CHOWDHRY.

West.
Burdwan.

1854.

November 17.

Case of
MORAD
CHOWDHRY.

Prisoner convicted of perjury, in having made two contradictory statements before a deputy magistrate, sentenced to three years' imprisonment. Appeal rejected.

CRIME CHARGED.—Perjury, in having on the 4th October, 1853, intentionally and deliberately deposed under a solemn declaration, taken instead of an oath, before the deputy magistrate of Boodbood, “that he saw Brijio Ghur engaged in the riotous attack on the dwelling-house of the moonsiff of Sonamookhy, attended with plundering the property,” and in having on the 29th June, 1854, again intentionally and deliberately deposed under a solemn declaration, taken instead of an oath, before the said deputy magistrate of Boodbood, “that he did not see the aforesaid Brijio Ghur in the time of the riot.” Such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Moulouvee Gholam Ushruff, deputy magistrate of Boodbood.

Tried before Mr. Pierce Taylor, sessions judge of West Burdwan, on the 10th September, 1854.

Remarks by the sessions judge.—The prisoner was a witness, on the part of the moonsiff of Sonamookhy, in a case of plundering, &c., against a large number of the inhabitants of that place, among whom was the individual named Brijio Mohun Ghur, alluded to in the quotations embodied in the charge.

The first deposition was given when the deputy magistrate went to investigate the case on the spot, and the second after Brijio Mohun Ghur had been apprehended, and it became necessary to confront him with the witnesses, who had deposed to his presence at, and participation in, the disturbance. The second answer, quoted in the charge, was given to a question put to the prisoner by Brijio Mohun Ghur himself. The actual words were, “I did not see you at the time of the disturbance,” but these could not, for obvious reasons, be conveniently inserted in the charge, as they stood. The charge was fully proven by the evidence of the mohurrir, who wrote the two depositions, and the chuprassies or peadahs, who administered the solemn declarations, taken by the prisoner in lieu of oaths.

The *futwa* convicted the prisoner of perjury “*buzunighalib*,” or violent presumption, and declared him liable to *tazeer*.

I concurred in this finding, except that I consider the proof full and legal, and thereupon convicted the prisoner and

1854. sentenced him as noted. There were no extenuating circumstances.
- November 17. *Sentence passed by the lower court.*—Three years' imprisonment with labor in irons.
- Case of **MORAD** *Remarks by the Nizamut Adawlut.*—(Present: Messrs. H. T. Raikes and J. H. Patton.) The Court, having perused the two statements made by the prisoner, find that they contain direct and positive contradictions on the matter indicated in the charge. They see no reason to interfere with the conviction and sentence and reject the appeal.
- CHOWDHRY.**

* PRESENT:

A. DICK AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT

versus

Hooghly.

TEELUK SHIKAREE.

1854.

CRIME CHARGED.—Having belonged to a gang of dacoits. Committing Officer.—Mr. E. Jackson, commissioner for the suppression of dacoity.

- November 17. Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly.
- Case of **TEELUK SHIKAREE.**

Remarks by the officiating additional sessions judge.—The prisoner, Teeluk Shikaree, was committed by the commissioner for the suppression of dacoity, and is charged with having belonged to a gang of dacoits, under the provisions of Act XXIV. of 1843. He pleads guilty to the indictment.

The prisoner was convicted of being a professional dacoit.

* Beshoo Mundul, witness. The evidence of an approver* witness convicts the prisoner of having been concerned in one dacoity and his abridged confession, recorded before the committing officer, sets forth that he has been associated with several gangs of dacoits, and taken part in six dacoities under different leaders.

The prisoner's detailed confession before the same officer embraces eleven dacoities, proof of the occurrence of the major part of which has been furnished by the magistrates in whose several jurisdictions the affairs took place. I have no reason to doubt either the truth or the voluntariness of these confessions.

The prisoner repeats his plea of guilty before this court, and admits his previous confessions. I convict him of the crime charged, and recommend that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) After perusal of the confessions and evidence detailed above, we convict the prisoner of the offence charged against him, and sentence him as proposed.

PRESENT :

H. T. RAIKES, Esq., *Judge*.
J. H. PATTON, Esq. *Officiating Judge*.

GOVERNMENT

versus

GOUR MOHUN GOPE ALIAS DHENGA GOPE.

CRIME CHARGED.—Wilful murder.

Mymensingh.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

1854.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, November 17.
on the 19th September, 1854.

Remarks by the sessions judge.—From the evidence of the witnesses taken on the trial and the record of commitment, it appears that on the day of occurrence, the deceased made some cakes for the family, and the prisoner at meal time asked the deceased, his sister, to bring him some *ghee*, and on her declining and going to tell the circumstance to their mother, the prisoner became enraged and struck her with a *dao* on the left side of her head, from the effects of which she died six days afterwards. The civil assistant surgeon deposed that the deceased's death was caused by an incised wound, $2\frac{1}{2}$ inches in length, on the head just over the forehead dividing the bone and penetrating the skull. The prisoner admitted both before the police and the magistrate that a dispute having arisen between him and the deceased regarding the *ghee*, he threw a *dao* at the deceased, which having struck her on the head, caused a penetrating wound and terminated in her death six days afterwards.

Case of
GOUR MOHUN
GOPE alias
DHENGA
GOPE.

Prisoner convicted of the culpable homicide of his sister, sentenced to seven years' imprisonment. Appeal rejected.

In this court, the prisoner confessed to having thrown the *dao* at the deceased, but not with an intent to murder her and the *dao* having hit a bamboo, struck the deceased on the head. The prisoner also admitted his mofussil confession, when read over to him and urged no defence. The jury, who sat with me on the trial, gave in a verdict of culpable homicide against the prisoner, and in concurrence with them I sentenced the prisoner to seven (7) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) We have perused the evidence of the deceased woman, and find she states distinctly that the prisoner in his anger, at not procuring the *ghee* he asked for, took up a *dao* and inflicted a blow on her head, this blow proved mortal. The attempt of the prisoner to palliate his act by saying that he only threw the *dao*, which struck a bamboo and then wounded her is evidently an invention. We see no reason to interfere with the sentence passed upon him.

PRESENT:

H. T. RAIKES, Esq., *Judge*.
J. H. PATTON, Esq., *Officiating Judge*.

CHAKUR GORAE AND GOVERNMENT

West Burd-
wan.

versus

NUBOO NAPIT CHOWKEEDAR.

1854.

November 17.

Case of
NUBOO NAPIT
CHOWKEEDAR.

CRIME CHARGED.—Burglary in having broken open the door of the plaintiff's house, on the night of 5th August, 1854, corresponding with the 22nd Srabun, 1261, and stealing therefrom property, valued at R. 1-14.

CRIME ESTABLISHED.—Burglary in having broken open the door of the plaintiff's house and stealing therefrom property, valued at R. 1-14.

The prisoner a chowkeedar, was convicted of burglary and sentenced to four years' imprisonment. Appeal rejected.

Committing Officer.—Mr. H. S. Porter, deputy magistrate of Mungulpore.

Tried before Mr. Pierce Taylor, sessions judge of West Burdwan, on the 15th September, 1854.

Remarks by the sessions judge.—The prisoner broke into a hut within the *enceinte* of the prosecutor's *baree*. While he was there, the prosecutor awoke and went out for a necessary purpose. This was at about 3 o'clock in the morning of the 6th August. On coming back again, he heard a noise in the hut, in which the prisoner was, and on going up to it, found the padlock and staple of the door lying outside, and saw the prisoner come forth with a *lotah* and *thalah* in his two hands. As soon as seen, he fled, and throwing away the property, got over a part of the wall of the *enciente* and ran towards the house of the woman, *Modée Chandalin*, witness for the defence, No. 11, who was his concubine. On the prosecutor's calling out *chor, chor*, the chowkeedar, *Nuffur Moochee*, witness No. 8, and others came up and, with them, pursued the prisoner, who entered the door of *Modée Chandalin*, which was open, and hid himself. The woman closed and fastened the door, and, when summoned to give up the fugitive, said she would not do so till morning. Upon this the pursuing party, with the chowkeedar, *Choto Kartick*, witness No. 1, and others who had come up *ad interim*, surrounded the house and watched it. A little before dawn, when the witness *Choto Kartick*, who was on guard at the door and had a lighted *cheragh* in his hand, was engaged in pouring oil into it, the prisoner, who was evidently eyeing him from the inside, rushing out and knocking him down, ran off. All the persons surrounding the house, including *Choto Kartick* pursued him and he was captured by the latter, in the fields, about sixteen *russees* from *Modée's* house, after he had received a blow from a

lattee. No one but the prosecutor saw the prisoner come out of the hut, with the property in his hands and then throw it down and fly, nor was he recognized before he entered *Modee's* house, but all the rest of the above circumstances were fully proven and the prisoner was never lost sight of, by any of the pursuing party, between *Modee's* house and the field where he was apprehended. He said nothing on that occasion and after his capture, up to which the prosecutor remained with the pursuing party. The witnesses saw the *lotah* and *thalah* lying where the prisoner had thrown them and the padlock and staple of the door, on the ground near the hut, which had been entered. A proper petition was presented at the thannah, as per Regulation II. of 1832, and the darogah made a *sooruthal*, which was duly sworn to. The *lotah* and *thalah* were also duly identified.

The prisoner, who, as was disclosed by the evidence, was chowkeedar of prosecutor's *para*, at the time of the burglary, and also his barber, pleaded *not guilty* and affirmed, that the case had been got up against him, by the prosecutor and other residents of the village, from enmity arising out of his connexion with *Modee Chandalin*. He also pretended that he had gone to that person's hut, at 7 or 8 in the evening and never left it until he was made prisoner, in the morning. His witnesses, the said *Modee* and her mother *Tara*, witness No. 12, supported his averments, but their statements were discrepant and evidently untrustworthy. It appeared that witness, No. 8, *Nuffur Moochee*, was acting for the prisoner, when the burglary took place, but there was no reason to suppose that he had joined prosecutor in getting up the case, nor that there was any enmity, or conspiracy against him on the part of the villagers.

The *futwa* of the law officer found the prisoner guilty on violent presumption, and as I approved thereof, I convicted him of the crime charged, and sentenced him as noted. It was at the same time ordered, that the property should be returned to the prosecutor.

Sentence passed by the lower court.—Two years' imprisonment with labor in irons and one year in lieu of stripes, and one year more in consequence of his being a chowkeedar, total four years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) This is a case dependent upon the credibility of the evidence, and as the judge, who examined the witnesses, records his belief in the statements made by those cited for the prosecution, the Court find no reason to impugn it, and reject the appeal.

1854.

November 17.

Case of.
NURBOO NAPIIT
CHOWKEER-
DAR

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, Esq., *Judges*.

KISTOMOHUN BERAH AND GOVERNMENT

versus

Hooghly. JAN MAHOMED CHAPRASSY (No. 9,) KEENOO CHAP-
RASSY (No. 10,) AND SHEIKH SALEEM (No. 11.)

1854. CRIME CHARGED.—Riot attended with the severe wounding of Kistomohun Berah.

November 18. CRIME ESTABLISHED.—Nos. 9 and 11, riot with severe wounding, No. 10, being an accomplice in ditto.

Case of JAN MAHOMED & others. Committling Officer.—Mr. C. S. Belli, magistrate of Hooghly. Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 12th August, 1854.

The proof being reckoned complete against the prisoners, their appeal was rejected. *Remarks by the officiating additional sessions judge.*—The prisoners are chaprassees attached to the overseer of the Government embankments; on the 12th of June last, they appear to have been sent to the prosecutor with a message from the overseer requiring his presence. The prosecutor was at the time occupied in reading an order from the darogah, prohibiting the trespass of cattle on the embankments, in conformity with instructions from the magistrate, and refused to go, alleging that he had nothing to do with their sahib, or master. On this, the prisoners laid violent hands on him and dragged him out of his house with the view of compelling him to accompany them. He broke away from them and in endeavouring to re-enter his house, fell down by coming in contact with a projecting beam. On this, the prisoners rushed on him and Jan Mahomed, prisoner No. 9, gave him a sword cut on the left elbow and Saleem Sheikh, No. 11, another across the back, the prisoner, Keenoo No. 10, being present and the first to seize and bring the prosecutor out of the premises. The proof as to the riot and assault is quite conclusive. The civil surgeon describes the arm-wound as very severe and is apprehensive that the use of the limb will never be perfectly restored. The wound across the back is comparatively slight. As this cutting and wounding was sudden and unpremeditated, I have made each prisoner responsible for the part actually taken by him in the unlawful proceedings.

Sentence passed by the lower court.—No. 9, sentenced to be imprisoned with labor and irons for five years. No. 11, without irons for three years and to pay a fine of 30 rupees within one month, or in default of payment to labor until the fine be paid or the term of his sentence expire, and No. 10, without irons for one year and to pay a fine of 30 rupees within one month, or in

default of payment to labor until the fine be paid or the term of his sentence expire. 1854.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, November 18. Bart., and Mr. B. J. Colvin.) The case is fully proved by the evidence on the record. The witnesses, brought forward by the prisoners, know nothing of the matter. We confirm the sessions judge's order in appeal. Case of JAN MAHOMED & others.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, Esq., *Judges.*

SHAIKH PYAROO AND GOVERNMENT

versus

SABOO SHAIKH DAGEE.

Moorshedabad.

CRIME CHARGED.—1st count, burglary in the house of the prosecutor, Shaikh Pyaroo, from which property to the value of Rs. 56-15, was plundered; 2nd count, receiving and possessing the stolen property, knowing the same to have been acquired by the said burglary.

1854.

November 18.

Case of
SABOO
SHAIKH DAGEE.

CRIME ESTABLISHED.—Burglary and theft.

Committing Officer.—Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. J. Money, sessions judge of Moorshedabad, on the 26th August, 1854.

The prisoner's appeal was rejected, his guilt being evident.

Remarks by the sessions judge.—The following eye-witnesses, Kalee Singh, Jectun chowkeedar, Janoo chowkeedar, Neroo Kandhoo, &c., prove that on the night of the 10th August, 1854, the prisoner burglariously entered the prosecutor's house and stole therefrom property to the value of Rs. 56-15. He was arrested inside the house and the property was found near a hole made in the wall, outside the house. The prisoner denied the charge, and in his defence stated that he lived in the house of the prosecutor, but this plea was entirely unsupported. His own witnesses, as well as those for the prosecutor, deposed to the contrary, and stated that they did not recognize the prisoner.

I considered the charge against him proved. He was on several previous occasions imprisoned for theft and knowingly receiving stolen property as well as for bad character. In the month of July last, he was committed on a charge of burglary, but released for want of sufficient evidence to warrant his conviction, and he committed this burglary almost immediately after his release. He appears to be a professional burglar; concurring with the *futwa* of the law officer, I convicted the prisoner of burglary and theft upon full legal proof, and sentenced him

1854. to eight years' imprisonment in banishment with hard labor in irons.
 November 18. *Remarks by the Nizamut Adawlut.*—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) The prisoner had entered the house and already removed some things out of it. The chowkeedar saw the hole, cried out to the proprietor, who with others unfastened the door and found the prisoner inside. The chowkeedar had in the mean time prevented his egress through the hole. We confirm the sessions judge's sentence.

Case of
 SABOO
 SHAIKH DA-
 GEE.

PRESENT :

SIR R. BARLOW, BART., AND B. J. COLVIN, Esq., *Judges.*

Case No. 1.—Committed in May, 1854.

GOVERNMENT

versus

HARRORAM DASS (No. 1.)

Case No. 1.—Committed in August, 1854.

GOVERNMENT AND RAMCHAND PANDAH

versus

Midnapore. SRINATH CHURN BHOOYEA (No. 1.) GUDDADHUR
 BAG (No. 2.) AND BÉHAREE POTDAR (No. 3.)

1854.

CRIME CHARGED.—No. 1, 1st count, forgery, knowingly, wilfully and fraudulently issuing or giving effect on the 13th March, 1854, to a forged document, viz., a deed of sale of Hoodah Doorba Chuttee, Pergunnah Kaseejorah, bearing date the 19th Phalgun, 1259, knowing the same to be a forgery by presenting it to the register of the district for registration; 2nd count, knowingly, wilfully and fraudulently issuing or giving effect to a forged document, viz., a *mookhtearnamah*, knowing it to be a forgery, empowering the said prisoner to cause the deed of sale aforesaid to be registered.

November 18. Case of
 HURRORAM
 DASS & others.

The proceedings were quashed, the magistrate having gone into the charge of uttering a forged deed at the instance of the Register of deeds.

Para. 4 of C. O. dated 13th March, 1846, declared to be still in force.

CRIME ESTABLISHED.—Wilfully and fraudulently attempting to give effect to a false deed, knowing it to be false.

CRIME CHARGED.—Nos. 1 and 2, 1st count forgery, wilfully and fraudulently attempting to give effect to a forged document, viz., a *byenamah* or a deed of sale of Hoodah Doorba Chuttee, Pergunnah Kaseejorah, bearing date the 19th Phalgun, 1259, knowing the same to be a forgery, by presenting it to the Register of deeds for registration on the 13th March, 1854; 2nd count, Nos. 1 and 2, and 1st count, No. 3, being accessaries to the above charge, both before and after the fact.

CRIME ESTABLISHED.—Accessaries both before and after the fact, in wilfully and fraudulently attempting to give effect to a false deed, knowing it to be false.

Committing Officer.—Mr. G. Bright, officiating magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 11th September, 1854.

Remarks by the sessions judge.—It is in evidence that previous to the year 1259, Umlee, the prosecutor, who is the proprietor of Mehal Doorba Chuttee, was at issue with his ryots and that the latter entered into a *dhurumghut* or holy alliance to resist the former in recovering his rents. The prisoner No. 3, Beharee Potdar, was the leader and adviser in this affair, and he and some others his co-adjutors sought the advice and assistance of the prisoner No. 1, Srinath Bhooyea. Srinath at first attempted to reconcile the disputants, but finding that of no avail he proposed to the prosecutor to take a *durputnee* lease or a farm of the estate, intimating that the ryots would never be pacified until some such arrangement was made. Prosecutor declined to accede to Srinath's proposals and a great deal of ill-feeling arose between them which terminated in Srinath's, aided by Beharee Potdar, endeavouring to usurp possession by proclaiming to the ryots that he had taken the estates in lease, and prohibiting them to pay rent to any one else. A riot subsequently ensued, the prosecutor's cutcherry was attacked and his tehsildar assaulted, and the prosecutor was compelled to seek the protection of the magistrate, when both the prisoners Srinath and Beharee Potdar were bound down in recognizances to keep the peace. Their attempts to get possession having thus been defeated other means were resorted to, which have resulted in this prosecution. It is likewise in evidence that about the 22nd or 23rd of the month of Phalgun, 1259, prisoner Srinath Bhooyea, No. 1, and Beharee Potdar, No. 3, and several others assembled at the house of Srinath and were engaged in fabricating some documents, with a view to deprive prosecutor of his village. Due intimation of what was going forward was sent by letters, by the witnesses Ramnarayn Bhooyea No. 2, and Gunganarayn Bhooyea No. 3, (who are uncles of, and live in the same homestead with Srinath) to prosecutor with whom they were on terms of friendship, and they recommended him to take measures to defeat the prisoner's proceedings. The prosecutor accordingly forwarded the letters marked in the calendar F. G. H. to his mookhtear at Midnapore, who acting on his master's authority presented a petition to the Register, setting forth that a *putnee bynamah* had been executed by the prisoners Nos. 1 and 2, transferring the *putnee* lease of Doorba Chuttee, &c., to the latter, that the whole was a forgery and praying that the deeds, if presented for registration, might be attached. It is

1854.

November 18.

Case of
HURROAM
DAES & others.

1854.

November 18.

Case of
HURRAM
Dass & others.

further in evidence that on the 13th March, 1852, the prisoner No. 2, applied through his mookhtear Haroram Dass the prisoner No. 1, of the calendar for the month of May, to register the deeds A and B, the Register acting on the previous information he had received refused to register them until the prisoner Guddadthur appeared in person. The prisoner on 21st March, through his mookhtears, demurred to this order and urged that since Guddadthur had appeared by his constituted attorney his personal attendance was unnecessary. The Register affirmed his previous order from which an appeal was preferred to the judge by the prisoner Guddadthur's *vakeels*, Aboolfurreh, Ubhoychurn Bose and Aboolfuzul, who on the 8th of May, 1852, upheld the Register's order. The prisoner Guddadthur, thus failing in his attempts to secure the registration of the deeds, presented a petition to the Register on 24th June, 1852, through his mookhtear, repudiating the *putnee bynamah* and denying that he had been a party to the transfer therein alluded to. It is also in evidence (*vide* deposition of witness Goopeenath Bhooyea No. 8, Kundo Gurree No. 9, Golam Nubbee No. 10, Kalachand Panjah No. 11, Aboolfurreh No. 13, Sreehuree No. 29, Kaleechurn Dass No. 34, Srinath Potdar No. 35, Purrikhit Bag No. 36, &c.) that about the end of the month Phalgun, 1259, the prisoner Srinath Bhooyea No. 1, and prisoner Beharee No. 3, visited Midnapore and then and there employed the prisoner Haroram Dass to file the exhibits A and B, in the Register's office to be registered; that both these parties were accessory to the filing of the petition of remonstrance against the Register's refusal to register the deeds and of the appeal preferred from his orders to the judge; that they and the prisoner Guddadthur were actively engaged, before a charge of forgery was preferred against them in the magistrate's court, in endeavouring to hush up the matter and also in soliciting the interference of influential parties about the courts to reconcile the disputants. The prisoner No. 1, Srinath in his defence throws all the responsibility on Guddadthur Bag and pleads that the witnesses Nos. 2, 3 and 8, are his enemies, their evidence biassed and not to be relied on. He also pleads an *alibi* from the month of Mag to the month of Chyete. The prisoner Guddadthur Bag pleads that he was utterly ignorant of the whole affair till the 24th June; that the prisoner Srinath is the fabricator of the forgery to serve his own malicious ends, and that he (Guddadthur) was absent from home when the deeds were filed in the Register's office. The prisoner Haroram Dass pleads that he was ignorant the deed was a forgery when he filed it, and Beharee Potdar pleads that his name has been included in the charge by the prosecutor, because he has long been at enmity with him. Srinath further demurs to the trial in this court, on the ground that he has been once acquitted by the magistrate and cannot therefore a second time be put on

his trial for the same offence. The evidence is, I think, complete and conclusive that Srinath Bhooyea, if not the actual fabricator of the deed was the prime instigator of it, and that it was prepared under his immediate guidance. The witness No. 8, Goopeenath Bhooyea, swears that the exhibit B, a copy of the *bynamah*, is in the hand-writing of Heeralal a school-master in Srinath Bhooyea's service, and that the *mokhtearnamah* (exhibit C) is written by Kalee Dass Roy formerly in Srinath's employ. Srinath's connection with the deed from the time of its arrival at Midnapore, to the date of its transfer to the magistrate, by the Register, is corroborated by witnesses, whose testimony cannot be doubted. His plea that having once been acquitted by the magistrate, he cannot again be put on his trial for the same offence is not tenable, when the magistrate originally committed this case, it was remanded to him under the powers vested in this court by the Circular Orders of the Nizamut Adawlut No. 70, dated 14th November, 1851. On perusing the record, *before taking any evidence*, it appeared to me that the proceed-

The Sudder Court is of opinion that in cases of forgery, a prosecutor is necessary. *Vide* case of

Government
versus

Ramkanahce Chowdhoree
mookhtear, appellant, dated September 24, 1851.

Further evidence which had not been taken was available, calculated to bring home the charge to others besides the party committed, and the magistrate was therefore directed to hear it, and then to exercise his discretion in reference to the commitment, this order was in conformity with the Circular Orders of the Sudder Court No. 177, dated 13th November, 1816; again the magistrate in his first *roobacaree* of commitment recorded his opinion, that all the parties *were guilty*, but that he refrained from committing, lest the sessions court should not be satisfied with the evidence against them. If the magistrate believed them to be guilty he had no power to acquit them. Moreover, an acquittal by a magistrate in cases where he has no final jurisdiction is only conditional, the Sudder Court have ruled that an acquittal by a magistrate of prisoners charged with crimes which would render their commitment to the sessions

Seebun Pandey
versus

Achmit Singh, wilful murder,
October 21, 1844.

necessary, if proven, is no bar to their being put on their trial at any future period, *should further evidence render such a measure expedient*. The present case was remanded for further evidence as indicated in my letter to the magistrate No. 64, dated 7th June, 1854, and the commitment of the prisoner Srinath was

1854.

November 18.

Case of
HURROAM
Dass & others.

1851.

November 18.

Case of
HURRORAM
DASS & others.

the result of the magistrate's carrying out these instructions. The law quoted by the prisoner Act XIX. of 1848, is inapplicable; Guddadhur Bag in his defence lays great stress on the circumstance of his having denied his participation in the fabrication of the deed, and all knowledge of its existence; but his denial was not made till he found there was no alternative to save him from the consequences that were likely to follow the inquiry in the magistrate's court. The deed was filed for registration on 13th March, and when its registration was refused, Guddadhur through his *mokhtear* remonstrated against the Register's order that his personal attendance was not requisite, and not satisfied with the orders of the Register, who affirmed his previous decision, appealed to the judge on the 8th May through his *vakeels*; failing to obtain a reversal of the Register's order, he then as a last resource gave a petition through his *mokhtear* to the Register on the 24th June, repudiating the deed, and expressing his entire ignorance of its contents. He wishes the court to believe that all the petitions, *mokhtearnamahs*, and *wakalutnamahs*, executed in his name and filed in the several courts between 13th March and 24th June, are forgeries, and that the last *mokhtearnamah* authorizing the petition of the 24th June to be filed, is the only one deserving of credit. The presumption however is strong, that the forged deed was filed for registration with the cognizance and approval of the prisoner. It is in evidence that he was at Srinath's house in the month of Falgoon 1259, and was then warned by the witness No. 2, of the consequences of having any thing to do with the forgery, which Srinath had then in contemplation. It is also clear that Aboolfurreh, who filed the petition of appeal against the Register's order, has been for years and *still is* Guddadhur's *vakeel*, and that subsequent to the judge's order in appeal, and prior to the petition of the 24th June, both he and Srinath sought the counsel of Aboolfurreh and other respectable parties whose evidence has been taken, how they were to avoid the consequences which were likely to follow the inquiry then going on in the courts. Guddadhur's guilty knowledge is further proven by the exhibit. S, a decree passed by the moonsiff of Pertabpore on 29th June, 1853, in which the prosecutor's nephew Notuber Panagrahee was the plaintiff versus the prisoner Srinath Bhooyea and Guddadhur Bag the defendant, the plaintiff sued to render null and void a *putnee bynamah*, and it was clearly proved that the deed was a forgery and fabricated on 19th Falgoon, 1259, by Srinath in favor of Guddadhur Bag, and presented by the prisoner Hurroram Dass in behalf of Guddadhur for registration on 13th March, the same day as the deed, now the subject of inquiry, was filed. Guddadhur Bag never attempted to repudiate that deed, nor to prevent its registration, nor to deny his guilty knowledge that it was a forgery, till cited to appear in the moonsiff's court when further

concealment was impossible. The prisoner Hurroram Dass cites witnesses to prove that Guddadhur Bag was the party who sent him the *bynamah* to be registered, but their manner of giving their testimony and their prevarication show that they have been tutored for the occasion; throughout the trial it has been the object of the prisoner Srinath and Guddadhur to implicate each other; Srinath from a feeling of revenge because Guddadhur repudiated the *bynamah*, and Guddadhur in the hope of throwing the entire responsibility of forging the deed and giving it effect on Srinath. They do not however succeed in my opinion in clearing themselves of the charges preferred against them; the crime of which they are guilty was not committed in self-defence, but was an act of aggression and their filing the deed in the Register's office was with a view to make the Government courts subservient to purposes of robbery and extortion, they are therefore deserving of severe punishment as principals and instigators. The prisoners Hurroram Dass and Beharce were merely the creatures and instruments of the other two prisoners, and, though guilty, their guilt is not of an equally grave nature. The assessors, with whose aid the trial was held, declare the prisoners guilty of the crime of which they are accused. I concur in this finding and sentence the prisoners as indicated in the body of the statement.

Sentence passed by the lower court.—No. 1, committed in May, 1854, to be imprisoned without irons for three years and to pay a fine of fifty (50) rupees within one month, or in default of payment to labor until the fine be paid or the term of sentence expire, Nos. 1 and 2, committed in August, 1854, five (5) years' imprisonment each without irons and to pay a fine of two hundred (200) rupees within one month, or in default to labor until the fine be paid, or the term of sentence expire, and No. 3, three (3) years' imprisonment without irons and to pay a fine of fifty (50) rupees within one month, or in default of payment to labor until the fine be paid or the term of sentence expire.

Remarks by the Nizamut Adawlat.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) The four prisoners were sent to the magistrate by the Register of deeds on the 8th September, 1853. The magistrate on the 1st October following, held a proceeding on the prosecution of Government against them and commenced judicial investigation of the case, which ended in the commitment of Hurroram Dass only, on the 9th May, 1854, the others being released. The sessions judge observing that Government was the only prosecutor, remanded the case by letter, dated 7th June, 1854, for one of the parties, at whose instance the forgery was brought to light, to be associated with Government, and advised the commitment of others who appeared to him to be connected with the case, who were not before him. Ultimately

1854.

November 18.

Case of
HURRORAM
DASS & others.

1854. the three others were committed on the 7th August, 1854, and
November 18. all four were sentenced by the sessions judge on the 11th September last.

Case of It is urged in appeal, relying on the precedent of Nursingh
HURRORAM Pandey decided on the 25th ultimo, that this prosecution is void
DASS & others. *ab initio*, as it was not instituted before the magistrate by the party aggrieved. We hold the objection to be good, if a judge was not held competent to send a case of forgery (not arising in a pending suit under Act I. 1848,) to the magistrate, *a fortiori* a Register of deeds cannot.

This being fatal to the commitment of Hurroram, it follows that the commitment of the others on the remand of his case cannot stand. The sessions judge was quite wrong in his instructions to the magistrate of 7th June, 1854. He therein assumed the character of a Government prosecutor, which does not belong to his office, and although the Circular Order 14th November, 1851, allows charges to be amended, it is only as regards prisoners on trial. It does not authorize the sessions judge to advise other parties being put on trial.

The Court take this opportunity of drawing attention to paragraph 4 of Circular Order No. 225, 13th March, 1846, which is still in force, although its preceding paragraphs have been superseded by Act I. 1848. The prosecutors in this case should have preferred their charge before the magistrate, who is only prohibited by the above law from entertaining charges preferred by parties to *pending* civil or criminal cases, without the sanction of the presiding authority of the court in which they may be pending.

The Court observe further, that the charges are incorrectly worded, being forgery, &c. in giving effect to a deed, &c. The acts of forgery and uttering, are so distinct that there cannot be a charge of forgery in giving effect to a forged deed, for forgery may be committed without the deed being given effect to, and a forged deed may be knowingly issued and given effect to by a party having no share in the original forgery.

Further the sentence upon Nos. 1 and 2, Srinath Churn Bhooyea and Guddadhur Bag is
• C. O. 27th January, 1837. illegal, as labor cannot* be commuted to fine, when a sentence of five years' imprisonment is passed.

The proceedings of trial are hereby quashed, and the prisoners must be discharged from custody.

The following correspondence took place with the sessions judge of Midnapore, after the disposal of the case of Horraram Dass and others.

1854.

November 18.

Letter from the sessions judge of Midnapore, to the register of the Nizamut Adawlut, No. 134, dated 24th November, 1854.

Case of
HURRORAM
DASS & others.

With reference to the remarks of the presiding judges in the case, noted in the margin,* I deem it requisite in self-justification to offer the following

* Horraram Dass and Srinath Chura Bhooya and others.

explanations for their information.

The Court is pleased to observe, "the sessions judge was quite wrong in his instructions to the magistrate of the 7th June. He therein assumed the character of a Government prosecutor." A copy of my letter to the magistrate of the date quoted is herewith annexed, which, it will be seen, is purely *suggestive*, pointing out to the magistrate, as I conceive it was my duty to do in the exercise of my prerogative as a judge, in what respects I deemed his investigation defective, leaving it at the same time optional with him to form his own conclusions and to *act* on them. My proceedings appear to me in no way to differ from the course the Court have taken in the case under review, in suggesting as they do that paragraph 4, of the Circular Order, No. 225, 13th March, 1846, is still in force, in other words that the magistrate may himself prosecute if he think proper.

I would further point out to the Court that I did not advise *other parties* being put on their trial. The parties I referred to were on their trial, their acquittal by the magistrate was, under the circumstances, merely conditional, and there was nothing to prevent their commitment if further evidence were forthcoming, agreeably with precedents of the superior Court.†

† Seebun Pandey

versus

Achmit Singh, wilful murder, October 31st, 1844.

The prosecutor, Ramchand Pundah, preferred his charge before the magistrate and his appearing as a prosecutor was his own voluntary

act; he did not come forward in that capacity in the first instance because he considered, with the magistrate, that such a measure was not necessary, as the register had directed the Government vakeel to institute proceedings. I suggested to the magistrate, as I before observed, where his proceedings appeared to me defective, and he, acting on my suggestions, took steps, with the concurrence of the prosecutor, to rectify them, but this did not, in my opinion, constitute me prosecutor, or vitiate in any way the proceedings which Ramchand Pundah had instituted.

In respect to the wording of the charge, I would observe that the crime for which the prisoners were tried, viz. giving effect

1854.

November 18.

Case of
HURORAM
Dass & others.

to a forged document knowing it to be forged, is classified under the general head of forgery and therefore in framing the charges, that general technical term was used.

With due deference to the Court, I would observe that the distinction between forgery and uttering forged documents does not exist in English law. Forgery as defined in Chitty's Edition of Blackstone, vol. IV. page 248, is to forge or *knowingly to publish or give in evidence any forged deed*, and if therefore my conception of the law be erroneous, it was based on what appears to me very good authority.

The commuting the labor to fine in the instance of Srinath and Gudadhur was a mistake, arising out of an erroneous impression that sentences in *excess* of five years were not commutable. The error however was rectified *before* the case came on in appeal before the superior Court.

Letter from the sessions judge of Midnapore, to the officiating magistrate of Midnapore, No. 64, dated 7th June, 1854.

"With reference to the case, noted in the margin,* which has come before me for trial this day, I have the honor to offer the following remarks.

* Government
versus

Horroram Dass, mookhtyar.

"After careful consideration of the evidence adduced for the prosecution, I cannot agree with you in the opinion you have expressed, in your *roobukaree* of commitment, that although there was no doubt of the moral guilt of the prisoner before you, the evidence was not such as to ensure conviction in the sessions court and that *therefore* you acquitted Gudadhur, Srinath and others.

"The several points to be considered in this case are 1st, whether there is evidence that the *byenamah* and the *mookhtyarnamah* are forgeries; 2nd, that the prisoners were the actual fabricators of those documents; 3rd, that they fraudulently issued or caused to be issued those documents, knowing them to be false, or if not principals in the foregoing acts that they were accessories before or after the fact.

"Of Gudadhur's complicity in some of the foregoing charges, I should think there is abundant proof on record or *forthcoming* to justify your committing him. To ensure your obtaining all the evidence available to aid you in your inquiry, it would be advisable to make one of the parties, Premchand Pandey, at whose instance the forgery was brought to light, a prosecutor

† Vide case of Government
versus

Ram Kanahsee Chowdry, mookhtear,
appellant, 24th September, 1851.

together with the Government.† In similar cases, such, in the opinion of the Court of Nizamut Adawlut, is the more proper course,

than making the Government alone prosecutor.

"Objections may be raised by the prisoners that having once been acquitted, they cannot be tried again on the same charge. A magistrate's acquittal under such circumstances is only conditional. The Sudder* Court have ruled that an acquittal by a magistrate, of prisoners charged with crimes which would render the commitment to the sessions necessary if proven, is no bar to their being put on their trial at any future period, should further evidence render such a measure expedient. In the present instance, there is more evidence available of which no cognizance has been taken by you, for instance the petition presented in the civil court by Gudadhur, praying that the register's order requiring him to appear in person to verify a deed which had been presented by his mohltear might be suspended. This would be needful as corroborative proof that he was accessory to the filing of his forged documents before the register.

* Subun Pandey
versus
Achmit Singh, wilful murder, October 31st, 1844.

1854.
November 18.
Case of
HURRORAM
Dass & others.

"Of Srinath's complicity, there is also proof available which Premchand Pandey might with propriety adduce or point out where procurable as prosecutor, though he could not do so in his present capacity as witness.

"Other points will arise in the course of further inquiry, meriting attention as assisting you in forming a correct conclusion, which it is not requisite for me to notice, but which experience will enable you to detect and make the most of."

Letter from the register of the Nizamut Adawlut to the sessions judge of Midnapore, No. 1028, dated 30th November, 1854.

With reference to your letter No. 134, of the 24th instant, offering explanation on certain points in the case of Harroram Dass and others, I am directed to state that the Court had an attested copy of your letter No. 64, dated 7th June, to the magistrate before them when they disposed of the case. Notwithstanding your present explanation, they still consider that you misapplied Circular Order No. 70, of the 14th November, 1851; the prisoners who had been discharged by the magistrate, although liable to trial again, were no longer *then* on trial, and therefore you should not have sent the instructions you did, based upon that circular regarding them, as you were the officer by whom they would be, if committed, tried. The Court's reference to para. 5, Circular Order No. 225, 13th March, 1846, was necessary, as in pointing out what had been done wrong, it was proper to point what would have been the right course, and their remarks on that point could not cause any parties to be brought to trial.

Regarding the incorrect wording of the charge, the Court refer you to Clause 3, Section 4, Regulation II. 1807, and

630d CASES IN THE NIZAMUT ADAWLUT.

1854. Clause 1, Section 10, Regulation XVII. 1817, where you will
November 18. find that the acts of forgery and uttering forged papers are
 distinguished, the latter law having been enacted to supply the
 Case of deficiency of the former one, which referred only to forgery.
 HURROHAM
DASS & others.

PRESENT :

SIR R. BARLOW, BART., AND B. J. COLVIN, Esq., *Judges.*

GOVERNMENT

versus

HURDIAL SINGH (No. 1.) LUMBTOA (No. 2.) AND
JUGRAM GORAIT (No. 3.)

Hazareebaugh.

CRIME CHARGED.—Wilful murder.

Committing Officer.—Captain T. Simpson, principal assistant agent to the Governor-General, Hazareebaugh division.

1854.

Tried before Major J. Hannington, deputy commissioner of Chota Nagpore, on the 18th September, 1854.

November 18.

Remarks by the deputy commissioner.—The prosecutor states that he was informed that his father had been killed by the prisoner, Hurdial, and that on coming to inspect the body of his father at Ramchurn Singh's house, he found marks of severe beating on it. His father was liable to duty work on Ramchurn's lands, whenever required. When witness came to the house, Boodhoo Bhandari had already apprehended Hurdial Singh. Also Lumbtoa and Jugram (prosecutor made this last statement with hesitation). It was Jugram who went to give information. He was apprehended when the darogah came to the place. Lumbtoa was at work till the darogah came.

Case of
HURDIAL
SINGH and
others.

The Nizamut Adawlut considered that two prisoners should have been released by the lower court agreeably to the view taken by it and acquitted them accordingly.

The prisoners plead *not guilty*.

No. 1, witness, Beersing Manjhee. On a Saturday in Bhandon, Lulloa Saoutar was at duty-work ploughing in Ramchurn Singh's field. About 8 or 9 A. M. Lulloa's plough was not making a furrow, and seeing this, the prisoner, Hurdial, struck Lulloa two blows on the back with *this* staff, and then Jugram came running and struck Lulloa two or three blows with his club. Then Lumbtoa came and struck Lulloa with his goad. Witness went to separate them and was beaten and knocked down by Lumbtoa and Jugram. The three of them then fell on Lulloa and beat him severely notwithstanding the witness's entreaties. Witness and others procured a cot and brought Lulloa thereon, in a dying state, to the veranda of Ramchurn's house, where he died about noon. Jugram and Ghiuoa gave information to the darogah, Jugram was privately sent by Boodhoo Bhandari. The prisoner, Lumbtoa, is witness's uncle, Boodhoo took up Hurdial only, Jugram and Lumbtoa were taken up the following day. Blood flowed from the wounds on the head of the deceased.

No. 2, witness, Gopceenath Manjhee, witnessed the fact and confirms Beersing's statement. The deceased did not strike any one. Witness is a servant of Ramchurn Singh.

1854.

November 18.

Case of
HURDIAL
SINGH and
others.

No. 3, Mohun Gowalla, No. 4, Boodhoo Ghatwul, No. 5, Munoo Taoree corroborate the foregoing evidence as to the assault by the three prisoners. The prisoner, Hurdial, is the steward of Thakoor Kanainath Singh, who is the father of Ramchurn Singh.

No. 6, Roopoo Ghatwul saw Hurdial strike the deceased with a club, Jugram and Lumbtoa interfered to save him.

No. 7, Lullit Koormes saw Hurdial strike the deceased with a club. Saw no one else strike him. Did not say before the magistrate that Jugram and Lumbtoa had interfered to protect the deceased.

No. 8, Ghinnoo Chowkedar.—The prisoner, Hurdial Singh, was apprehended by Boodhoo Bhandari. No one else was accused at that time. Witness has called him Goordial by mistake.

No. 10, Gujoo Gowalla, No. 11, Buccus Gowalla, No. 12, Jibram.—These witnesses prove the record of the inquest.

No. 13, Mungra Ghatwul.—At the distance of a gun-shot saw the three prisoners assault the deceased.

The prisoner, Hurdial, in his defence, states that he had been sick, and that having spoken to the deceased about his careless ploughing, mutually abusive language passed, and a personal struggle ensued. Prisoner had club, and the deceased struck him slightly with a goad. Jugram and Lumbtoa then interfered, and prisoner went away to get medicine for his ailment. The deceased walked home. This was in the forenoon. In the afternoon, Lulloa's body was brought on a cot to the Thakoor's house. Prisoner does not know how the deceased came by his death. Beersingh bears the prisoner a spite. The prisoner's witnesses prove that he was sick, and that he did not strike the deceased.

The prisoner, Lumbtoa, in his defence, states that the prisoner, Hurdial, and the deceased had a struggle together, and prisoner came to separate them. Deceased had marks of blows of a club on his back. The deceased walked towards his own house, and prisoner does not know how he died.

The prisoner, Jugram, offers the same defence as Lumbtoa.

No. 14, Latta Gowalla, No. 15, Ramjeet Sooree, No. 16, Asaram Gowalla, No. 17, Kamul Mistree, No. 18, Kasse Hazam, No. 19, Boodhoo Bhandari, No. 20, Assi Gowalla, No. 21, Garee Tailee, No. 22, Sookram Deswaree.—The witnesses for the defence say that the prisoner, Hurdial, was not sick. They have no knowledge of any matter of defence whatever.

The jury, whose names are entered below,* find the three prisoners guilty of wilful murder.

* Lalla Kalliohurn Mooktear, Lalla Chummun Lall Mooktear.

1854.

November 18.

Case of
HURDIAL
SINGH and
others.

If the testimony of the greater part of the witnesses to the fact may be received without question, it will sustain the verdict of the jury against all the prisoners. But I do not think that evidence worthy of implicit credit. My reasons for this conclusion are as follows. The information given by Ghinoo chowkeedar to the burkundazes of the police station was that Lulloa had been killed by Goordial (Hurdial), and Ghinoo's evidence confirms this. No one else, he says, was accused at that time. Information was likewise given to the darogah by the prisoner Jugram himself, that Hurdial only had killed the deceased. And the evidence, above recorded, shows that only Hurdial was taken into custody by the village watch. The accusation against the others was not made until the darogah came to the place, and it was then made by the prosecutor, who had no personal knowledge of the facts. This accusation was made on the 13th August, and the answers of the prisoners are dated 13th and 14th. But that of Hurdial was sent up with the darogah's report, dated 14th August, while those of the others were kept back till the 19th, in which latter report, the darogah remarks that some witnesses criminate Hurdial only, and that some criminate the three prisoners. The darogah throughout calls the case one of assault, and reports that the marks of violence on the body were inconsiderable. The impression left on my mind by all this is, that the darogah has dealt dishonestly with this case. To exculpate the prisoner, Hurdial, was not possible without an entire suppression of the evidence, but to screen him by implicating others and by distortion of evidence was easy. And this course was followed. The evidence of each witness has been separately recorded by the darogah, in contravention of the rules prescribed for his guidance. The club sent up as the *lethal* weapon is long, thin and light, not by any means a dangerous instrument. Every thing that could be done to mitigate the charge against the prisoner, Hurdial, has been done. He is a man of superior caste, and the other prisoners are of low caste. As to the defence of the prisoners, that of Hurdial is of no weight and is destitute of proof. That of the other prisoners is partly supported by the evidence for the prosecution.

I believe that Hurdial alone is guilty, and his offence is of an aggravated kind. There was on the part of the deceased, no provocation given. The unfortunate man was performing duty-work, without fee or reward, and was mercilessly beaten for a trifling neglect, whether real or supposed. The recklessness with which life was taken under literally "club law," demands repression by the utmost legal severity. I consider the prisoner, Hurdial, guilty of aggravated culpable homicide, and would recommend that he be sentenced to imprisonment with hard labor for a term not under fourteen years. The other prisoners, I

1854. would acquit, but looking to the amount of positive evidence against them, and to the verdict of the jury thereon, I have thought it proper to leave the sentence on them to the discretion of the Superior Court.
- November 18. *Case of HURDIAL SINGH and others.* *Remarks by the Nizamut Adawlut.*—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) It was fully within the competency of the deputy commissioner, entertaining the view of the case as he has reported it, to have acquitted the prisoners, Nos. 2 and 3, irrespective of the opinion or verdict of the jury. We think that they are entitled to the benefit of the deputy's opinion in their favor, and acquit them accordingly. We concur in thinking the case proved, against the prisoner, No. 1, Hurdial Singh, and pass the sentence proposed by the local authority.

PRESENT:

A. DICK AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT

versus

JUGUT CHUNDER ROY SEN.

24-Pergunnahs.

1854.

November 22.

Case of JUGUT CHUNDER ROY SEN.

The prisoner was convicted of presenting a forged letter of recommendation to the magistrate.

CRIME CHARGED.—1st count, forgery and fabrication of a letter in the English language, purporting to be a letter of recommendation from H. C. Metcalfe, Esq., judge of zillah Tipperah, to H. D. H. Fergusson, Esq.; 2nd count, forgery of the name of H. C. Metcalfe, Esq., judge of Tipperah on a letter in the English language purporting to be a letter from that officer; 3rd count, uttering the above forged and fabricated letter well knowing the same to have been forged and fabricated, by fraudulently presenting it to the magistrate of the 24-Pergunnahs on the 27th June, 1854, with intent, by means of the said forged letter, to obtain Government employment from the said magistrate; 4th count, fraudulently attempting to obtain employment in the police of the 24-Pergunnahs by presenting a fabricated letter of recommendation to the magistrate of the said district.

CRIME ESTABLISHED.—Uttering a forged and fabricated letter in the English language, purporting to be a letter of recommendation from H. C. Metcalfe, Esq., judge of Tipperah, well knowing the same to have been forged and fabricated, by fraudulently presenting the same to the magistrate of the 24-Pergunnahs, with intent to obtain employment in the police.

Committing Officer.—Mr. H. Fergusson, magistrate of the 24-Pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 29th July, 1854.

Remarks by the officiating additional sessions judge.—I cannot describe this case better than in the words of the magistrate in his abstract of the grounds of commitment as set forth in the calendar, particularly as the circumstances therein detailed have been attested by him as a witness on the trial. The prisoner presented a letter to the magistrate of the 24-Pergunnahs stating it to be from Mr. Metcalfe, the judge of Tipperah. The magistrate being intimately acquainted with Mr. Metcalfe, and knowing that the said gentleman was sick at the Cape, immediately detected the forgery and asked the prisoner where he had got the letter. He replied that his *father*, Opendronarain, had sent it from Tipperah. He was immediately arrested and his statement written down, when he said that his *uncle*, Opendronarain, had sent him the letter; but on inquiry, no such man was to be found at Tipperah. The prisoner then said the letter had been given him by one Gobind Paul, but he also is not forthcoming. The magistrate adds that the letter is a palpable forgery and fabrication, and that the conduct of the prisoner proves that he knew it to be so, and that his acquaintance with the English language raises a violent presumption that he wrote it himself. The facts stated by the magistrate are clearly proved against the prisoner, he admits having presented the letter with the view of getting employment in the police.

Sentence passed by the lower court.—Imprisonment with labor and irons for three years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The prisoner has appealed, asserting that he presented the letter in ignorance of its not being genuine, but no intelligence of the parties named by him could be obtained, no proof was given of his first story to the magistrate that the letter had been sent to him from Tipperah; and he afterwards admitted that that story was false. We reject the appeal.

1854.

November 22.

Case of
JOGUT CHUN-
DER ROY SEN.

PRESENT :

A. DICK AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT

versus

BOOJURUK CHUMMAHER (No. 4,) MOZUFFER ALI
 ALIAS JUGRAH (No. 8,) KALOQ (No. 9,) SUFFER ALI
 (No. 10,) MEER ALI (No. 11,) SUFFER ALI (No. 13,) ABDOOL ALI (No. 15,) HASSUN ALI (No. 16,) HARI BOLI (No. 17,) MUNNOO BOLI (No. 18,) SECUNDER BOLI (No. 19,) ABDOOL ROHMAN (No. 20,) FUKKEER MAHOMED (No. 21,) SOODARAM HOOLAL (No. 22,) MAGUN ALI (No. 25,) MYNUDDIN (No. 27,) ESUF ALI (No. 31,) JAFIER ALI (No. 32,) SONA GAZEE (No. 33,) MOHSEIN ALI (No. 35,) ABDOOL GUNNY (No. 36,) PANCHCOUREE (No. 37,) MEER ALI (No. 38,) PETUN MOTABUR (No. 39,) OSMAN ALI (No. 44,) AND BOCHA GAZEE (No. 55.)

Chittagong.

1854.

November 22.

Case of
 BOOJURUK
 CHAMMAHER
 and others.

One of the prisoners, a boy fourteen years old, was acquitted on account of his youth.

Section 56, Regulation X, 1819, does not authorize a cumulative sentence.

The sessions judge informed that he should not have issued orders to the magistrate to bring a prisoner to trial under Regulation II. 1797.

CRIME CHARGED.—1st count, riot with intent to murder inas-
 much as they, the defendants Nos. 4, 8, 9, 10, 11, 13, 15, 16, 17, 18, 19, 20, 21, 22, 25, 27, 31, 32, 33, 35, 36, 37, 38, 39, 44 and 55, did riotously and in an armed body forcibly oppose Mr. J. S. Rochfort, the assistant superintendent of Chittagong salt chowkies, his officers and the police, while engaged in the execution of their lawful duty, and did then and there violently assault and wound Mr. J. S. Rochfort with sticks and throw him into a tank and while therein, hurled sticks, &c., at him with intent to murder him, and did also severely assault and wound with intent to murder the police darogah of thannah Chukkerreah, Ruhmut Ali, and Soondur Singh, salt chowkie burkundazes, the police and salt burkundazes, at the same time releasing the parties who had been arrested by Mr. J. S. Rochfort for having in their possession illicit and contraband salt and articles connected therewith; 2nd count, the defendants abovementioned are charged with being accomplices in the above crime; 3rd count, the defendants are all charged with aiding and abetting in the above crime.

CRIME ESTABLISHED.—Riot with severe wounding.

Committing Officer.—Mr. J. R. Muspratt, magistrate of Chittagong.

Tried before Mr. O. W. Malet, officiating additional sessions judge of Chittagong, on the 13th June, 1854.

Remarks by the officiating additional sessions judge.—On the 3rd December last, Mr. J. S. Rochfort, assistant in the salt department, attended by a police darogah with five burkundazes

1854.

November 22.

Case of
BOOJURUK
CHAMMAHER
and others.

and thirty, or forty of his own men, was escorting as prisoners for offence against the salt laws, fifteen men captured in the village of Harbung. The party at their first setting out, were met by a body of men who, however, shortly dispersed, but after proceeding as far as a village, called Burratulli, they were again encountered by a large mob of two or three hundred, who had come to rescue the prisoners, whom they demanded with threats and insulting gestures. Mr. Rochfort, having a gun in his hand, fired it in the air with the view of intimidating them, but without effect, he was immediately knocked down by a thrust in the body, and a severe blow on the head, which laid open his scalp: he was then violently forced into a tank, and pelted by the crowd with every kind of missile they could make available, clods of earth, sticks and his own *tonjon* broken up for the purpose, and his life would probably have been taken, had it not been for the conduct of two burkundazes, Goberdhun Singh and Gholam Ali, who supported him in the water, and received a quantity of the blows that were meant for him, on their own bodies; Mr. Rochfort having been stunned by the blow on the head. Several others of the party were so severely wounded as to be obliged to be put under surgical treatment; one poor man received a bad wound in the groin from a spear, which some of the witnesses say was intended for Mr. Rochfort; another man was so severely beaten that it is feared he will be paralytic for life, among these badly hurt, was Gouree Kant Ghosal, the police darogah. No defence could be even attempted by the attacked party, they called out in the native fashion, "*Dooai* magistrate *sahib*, *dooai* Company *bahadoor*," but it had no effect, and they were, in a manner overwhelmed; the prisoners of course made their escape, or were rescued, but the rioters were not content, and savagely belaboured the unfortunate men, when on the ground and unable to resist. The principal men among the rioters were; 1st Boojuruk Chummaher, defendant No. 4. This man is of a very respectable family, he is the son of a wealthy zemindar, and had a brother a deputy collector; he was the leader and instigator of the riot; he was heard, it is said, to give orders to kill the *sahib*, and he was the person that wounded the man in the groin with the spear; and nearly the whole of the other defendants as well as the prisoners they rescued, are his ryots and dependants; 2ndly, two brothers, Mozuffer Ali *alias* Jugrah, defendant No. 8, and Kaloo, defendant No. 9. These two young men, brothers, one of them son-in-law of another zemindar, but connection of defendant, No. 4, were the most active in the riot. No. 8, was the man that struck Mr. Rochfort on the head, and both he and No. 9 did their best to incite the others by precept and example; 3rdly, Mohsin Sikdar, defendant No. 35, this man was the leader of a separate detachment that came to help the first. Besides these, there are twenty-two others, in whose conviction by the

1854.

November 22.

Case of
BOOJURUK
CHAMMAHER
and others.

law officer, I concur, and have sentenced them as follows. Boojuruk Chummaher seven years' imprisonment in irons. I have exempted him from labor under Circular Order 44, 28th March, 1807, but have imposed on him a fine of 200 Rs. or two years' additional imprisonment* under Section 56, Regulation X. of 1819, for though the releasing of prisoners is not stated as a specific charge, it is shewn in the explanation in the calendar that the riot was made for that purpose, and it is clear from the case itself that it was so: the three other individuals that I have mentioned as principals, I have sentenced to seven years each with labor in irons, and the remainder of the defendants, as per statement, to five years each, with labor in irons. Besides the above, there were twenty-seven men sent up by the magistrate; of these the evidence for the prosecution was not sufficiently conclusive against twenty-two. They were acquitted by the law officer and myself and released without being called on for their defence: against five others, the evidence for the prosecution was weak, and that for the defence strong, and concurring also in their acquittal by the law officer, they were released at the end of the trial; amongst these was one Roshun Ali, an old man and a zemindar. I was for some time in doubt as to whether I should refer his case or not to the Sudder Court; on consideration I agreed, but have directed him to be brought to trial under Sections 2 and 3 of Regulation II. of 1797, to be intermediately held to bail; the evidence in the lower court was quite sufficient to warrant the magistrate in making over the whole of those now acquitted, and he, I think, deserves much credit for his very prompt and energetic measures, had they not been so, the greater part of the defendants would never have been apprehended, the facilities for absconding or emigration being so great in this district.

The evidence in the case was not what could have been wished, scarcely any one but the party attacked being available, and consequently open to cavil and suspicion, but it was the best procurable, many of the witnesses varied in their recognition of individuals in my court from the depositions they had given before the magistrate, however in no case, do I think, this arose from wilful or careless mis-statement, but was rather owing to the difference in appearance of the defendants, after some months' confinement, and by testing their evidence in various ways and cross-examination, I have done my best to ascertain the truth.

Since the conclusion of the trial, I have been told that the origin of the riot was that an old lady, (the wife of Roshun Ali, defendant No. 5, above referred to) on being informed that her ryots' houses were being searched, and that some of them had

been captured, sent a portion of her dress to Boojuruk Chum-maher with a message that if he allowed such proceedings to be carried on, the dress sent was suitable for such as he; excited by this message, he collected his men and instigated the riot.

They have since received 100 Rs. each, and a perwanah from the controller.

I should have wished to have given a reward each to Goberdhun Singh and Gholam Ali for their conduct, but though meritorious, it was not in the apprehension of offenders. I therefore have not the power to do so, I shall suggest to the controller of the salt chowkies that favorable notice be taken of these two men.

There being no heading in the criminal statements of riot with attempt to murder, I have altered it to riot with severe wounding.

In connection with this case, an attempt was made to bring a case of murder against Mr. Rochfort for shooting a man and a body was exhumed, a wound cut in it, this was disposed of by the magistrate.

I trust I may be excused in requesting the Court to turn some attention to the salt arrangements in the district. A man here is obliged to pay five times the price for salt that he can make it for, and from time immemorial they have been in the habit of making it, can it then be wondered at that collisions should take place?

If I recollect right in the zillah of Pooree, the residents are allowed to have their salt at a lower rate than strangers, could not something of that sort be done in Chittagong? It is a miserably poor zillah and requires gentle treatment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) After a perusal of the petitions of appeal, and reference to the record of trial and preliminary proceedings, and after hearing the pleader for the appellants, who was present, Mr. Norris, and the Government pleader, Baboo Sumboonath, on the part of the prosecution, we see no reason for interference with the sentences of imprisonment passed on the prisoners, with the exception mentioned below. The attack of the prisoners on the salt officers, while in the performance of their duty, was an utter defiance to the authority of Government, and aggravated by severe wounding and ill-treatment. We acquit, however, the prisoner, Kaloo, on account of his youth, being a lad of fourteen years of age, and therefore presumed to be under the influence of his seniors, and direct his release. We also reverse that portion of the sentence passed on the prisoner, Boojuruk Chum-maher, No. 4, which awards the penalty of a fine, and in lieu thereof additional imprisonment for two years, the fine having been awarded under Section 56, Regulation X. 1819. The expression "further" in the above section, in the

1854'

November 22.

Case of
BOOJURUK
CHAMMAHER
and others.

1854.

November 22.

Case of
BOOJURUK
CHAMMAHER
and others.

opinion of the Court, does not mean, that both penalties are to be awarded on one and the same indictment. A person might be tried for and convicted of the first offence, and fined by the magistrate, or the same party might be indicted and committed to the sessions for the second offence, and punished, but a cumulative sentence cannot be passed on an indictment for the latter offence only.

We observe, for the future guidance of the officiating additional sessions judge, that he is not authorized to issue any such orders or directions to the magistrate, as those he has sent to that officer with respect to Roshun Ali, prisoner, acquitted by him. The utmost a sessions judge is empowered to do, in such cases, is to bring the circumstances to the notice of the magistrate, or of his superior, the commissioner, as superintendent of police. He must accordingly recall his order, leaving the magistrate to use his own discretion.

Further ordered, that with reference to the concluding remarks of the officiating additional sessions judge, a copy of his letter be forwarded to the Sudder Board.

PRESENT :

A. DICK AND B. J. COLVIN, Esqs., *Judges*.

GOVERNMENT

versus

Mymensingh.

LOCHUN CHUNG.

1854.

November 22.

Case of
LOCHUN
CHUNG.

CRIME CHARGED.—Perjury in having on the 7th August, 1854, deposed under a solemn declaration made instead of an oath before the law officer of zillah Mymensingh, in the case of Kartickram Chung, that he bore no relationship to the prosecutor, the same being false and having been deliberately and intentionally made on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

The prisoner was acquitted for want of proof that he had been duly sworn before the officer who took his deposition containing the alleged perjury.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Tried before Mr. W. Trotter, sessions judge of Mymensingh, on the 19th September, 1854.

Remarks by the sessions judge.—It appears from the record that the prisoner was cited as a witness in the case of Kartickram Chung prosecutor, and deposed before the law officer of this district, that he bore no relationship to him, but it having appeared that he was the cousin of Kartickram, the law officer held inquiries into the matter and ascertained, through the darogah and witnesses in the neighbourhood, that he was so related,

and the prisoner in his subsequent confession admitted that he was related. In this court the prisoner urges that he told the mohurrir, who wrote his evidence in the foudary, that he bore the relationship of "*beradurree*," that the question not having been explained to him he did not say so before. He urged no defence, and the jury gave in a verdict of guilty against him in which I concurred.

Sentence passed by the lower court.—To be imprisoned for the period of (3) three years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) ' We observe that the record does not shew that the prisoner was sworn, when he gave his evidence before the law officer. He had first been examined on oath by the magistrate, and the case had apparently been then transferred to the law officer, who should have certified, in like manner as the magistrate, to the continuation of the examination on oath. On reference by the magistrate to the law officer to ascertain if he had sworn the prisoner, he merely answered that he always did so; and the mohurrir who wrote the deposition of the prisoner before the law officer was asked at the trial whether the prisoner had been duly sworn. He replied yes, but he could not remember which one of two burkundazes had administered the oath. On reference to the calendar we find, that neither of these two has been examined as a witness on the point. We therefore, on failure of sufficient proof that the prisoner was duly sworn by the law officer, acquit him.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, Esq., *Judges.*

MAHOMED SABUR

versus

ABDOOR ROHIM (No. 1,) ASHRUF ALI CHOWDHRY (No. 2, APPELLANT,) AMOOD ALI ALIAS AMOODY (No. 3,) MAHOMED ALUM ALIAS ADO MILKY (No. 4, APPELLANT,) SHOOJAT (No. 5,) SHURUFATOOLLAH (No. 6,) AND SHUMBHOO MALI (No. 7, APPELLANT.)

CRIME CHARGED.—1st count, dacoity at the house of the prosecutor and plundering therefrom property belonging to him, valued at Rs. 463; 2nd count, riotously assembling in an armed body, assaulting and wounding Manullah and Boharam, attacking the prosecutor's house, and plundering therefrom property belonging to him, valued at Rs. 463; 3rd count, riotously assembling in an armed body, and fraudulently distraining the property

1854.

November 22.

Case of
LOCHUN
CHUNG.

Tipperah.

1854.

November 23.

Case of
ASHRUF ALI
and others.

The evidence for the prosecution was deemed conclusive against the prisoners, their appeal was therefore rejected.

1854.

November 23.

Case of
ASHRUF ALI
and others.

of the prosecutor under Regulation V. of 1812, with intent to plunder the same.

CRIME ESTABLISHED.—Riotously attacking the house of the prosecutor Mahomed Sabur, wounding Manullah and Boharam, and plundering him of his property.

Committing Officer.—Moulvee Golam Yeahiah, law officer with full powers of a magistrate at Tipperah.

Tried before Mr. H. C. Halkett, officiating sessions judge of Tipperah, on the 19th June, 1854.

Remarks by the officiating sessions judge.—The prosecutor resides in mouzah Hajespore of which he is a one-anna proprietor.

It seems that about 7 o'clock in the morning of the 23rd of November last, the prisoners in a body of about eighty or ninety persons variously armed with spears, clubs, swords, shields, &c., attacked the prosecutor's house uttering cries of "Ali, Ali," "*mar, mar.*" The prosecutor, at the first alarm of their approach, hastily removed his women to preserve them from insult, and himself ran towards a neighbouring jungle where he hid himself. The prisoners entered the women's apartment and carried off from thence property amounting altogether (with the ready money) to rupees 463. The boxes and chest, in which most of the property had been contained, were carried off entire, none being broken open at the time of the attack. Some of the neighbours came up at the time and endeavoured to stop the prisoners' proceedings, crying out for help; when one of the prisoners named Amood Ali *alias* Amood Paik, wounded one of those who came to the scene, called Boharam, (witness No. 6.) in the arm with a spear. Another of the neighbours named Manullah (witness No. 5.) received a blow on the left arm with a *lattee* inflicted by a man called Sooltan (not present.) The prisoners then assaulted and drove off the other persons who had come up on hearing the disturbance. The rioters then carried off the property plundered, proceeding in a westerly direction towards mouzah Jussatooah, where Adoo Milkee, the brother-in-law of Abdoor Rohim (prisoner No. 1.) resides. They deposited the property there in the house of a man named Dil Mahomed. This village is situated about eight miles distant from that where the prosecutor lives. The prosecutor, it appears, has for some time past had a dispute with the prisoner Abdoor Rohim who had wished him to sell to his brother-in-law, Golam Ali, a one half-anna share of the property belonging to the prosecutor, but which the latter refused to consent to. It appears that, subsequent to the riot, Golam Ali tried to accommodate the case with the prisoner and hush up the matter, by offering to restore to him all of the property plundered, which he had with himself. This arrangement the prosecutor refused to listen to, as he would be content with nothing less than the recovery of all that he had been plundered of. The prisoner Abdoor Rohim (No. 1.) de-

1854.

November 23.

Case of
ASHRUFF ALI
and others.

clares that the property had been distrained by him under Regulation V. of 1812, he having purchased the property, and the prosecutor being his ryot. This plea is however utterly unavailing as there is not the slightest proof to show that Abdoor Rohim, (prisoner No. 1.) has any right or interest in the property whatever; nor were any of the farms, properly observable in distraining, used on the occasion. To give a cover to his proceedings the prisoner Abdoor Rohim (No. 1.) had procured the attendance of a Muskooree peadah named Mohun Singh; but this man, (since deceased) declared before the magistrate that he had strongly protested against the violence and illegality of the whole proceedings, but to no purpose.

The whole of the occurrence above detailed were fully proved by the evidence of six witnesses, the neighbours of the prosecutor, who saw the attack made and the property carried off, and identified the whole of the prisoners whom they had all known before, being residents of the part of the country. One of the prisoners, Ashruff Ali Chowdhry, (No. 2.) is a brother of Golam Ali, who is mentioned above, had desired to purchase a share of the prosecutor's property; Abdoor Rohim the leader and principal party in the attack, is brother-in-law of Golam Ali. The generality of those concerned are distinctly stated to be dependants of Golam Ali, who, no doubt, was the instigator of the whole affair. He is a well known violent character, and has been more than once condemned to confinement in jail, for his share in outrages of various kinds. One of the prisoners, Amood Ali, *alias* Amoody (No. 3.) confesses that he had aided in the carrying off of the property of the prosecutor. This man is a most notorious bad character. Since the year 1828, he has received punishment many times for being concerned in various acts of violence, and is a well known *budmash*; Ashruff Ali, (prisoner No. 2.) also has undergone various terms of imprisonment at different periods. The prisoner Shoojat (No. 5.) was once before imprisoned.

The prisoners Ashruff Ali (No. 2.) Mahomud Alum (No. 4.) Shoojat (No. 5.) Shurufatoollah (No. 6.) and Shumbhoo Mali (No. 7.) pleaded *not guilty*, denying their having been on the spot at all. But of these only Ashruff Ali, (No. 2.) and Shurufatoollah (No. 6.) name any witnesses. The first of these had given in a list of no less than twenty persons, comprising amongst others, the names of several of the most respectable inhabitants of Comillah amlahs of the court, pleaders and others; of these however, he actually brought forward none save three, who were near relations or dependants of Golam Ali himself, and whose evidence in such a matter was utterly worthless. The witnesses named and brought forward by Shurufatoollah (prisoner No. 6.) are his own relations, and their evidence can as little be considered trustworthy. Before the magistrate three other persons, respectable inhabitants of Comillah, brought forward by Ashruff

1854.

November 23.

Case of
 АННАУТ Али
 and others.

Ali, (prisoner No. 2.) to prove the fact of his having been at the sudder station on the day when the riotous attack occurred, denied all knowledge on the subject one way or the other.

It is apparent, for the following reasons, that the alleged suit under Regulation V. of 1812, was merely a pretence for plundering the prosecutor's property.

1stly. The attachment of the property was not made according to the provisions of the Regulation, because it is clearly proved by the evidence of the thannah peon that although he had urged the propriety of doing so, none of the neighbours were called for on the occasion, neither was the property listed nor its value estimated, the chests containing the property being taken out of the house and carried away unopened.

2ndly. As already stated, the property, instead of being placed in the custody or charge of some of the respectable persons in the prosecutor's neighbourhood, was carried to a distance of about eight miles.

3rdly. All the property proved to have been carried away by the prisoners was not entered in the list, now found in the *nuthee* of the Regulation V. suit, and even those few that *are* mentioned therein, were estimated much beneath their real value. For instance, three cows were estimated at fifteen annas (!) and three chests, one of which is stated to be three cubits in length and two in breadth at Rs. 2-4. Their proper value could scarcely have been less than 10 Rs.

4thly. The prisoner, Abdoor Rohim (No. 1.) stated in his petition of the 15th Poos, presented to the collector, that on the 11th of the previous month (Aughun), the prosecutor forcibly carried away certain attached property, but in the list of property filed by him on the 12th of Aughun, no mention whatever is made of this circumstance.

5thly. The prisoner Abdoor Rohim (No. 1.) declares that he attached the property on the 9th of Aughun, but it does not appear that the list thereof was filed at the sale commissioner's office before the 12th of the month, and only then, no doubt, on information having reached him that the prosecutor had already laid his complaint at the police on the 10th.

Under all the circumstances of the case, the proof being so clear against the prisoners, the plea of the prisoner Abdoor-Rohim, with regard to the Act V. case, can only be regarded as so much further evidence against him.

The prisoners were sentenced by me to suffer imprisonment for the term of five years with hard labor in irons. The amount of the property plundered was also directed to be made good by the attachment and sale of the property of the prisoners, or of so much of the same as would cover the amount of loss sustained.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Bar-

low, Bart., and Mr. B. J. Colvin.) The Court have to notice specially, the absence of the comparative statement, required by Circular Order, No. 7, of 26th May, 1854.

We see no reason to interfere with the sessions judge's order. Though the plaintiff did not name two of the prisoners at first, he did, in his first deposition and the witnesses have, from the commencement of the inquiry, inculpated them. The defence, of the two named at the subsequent examination, is *alibi*. The evidence of the witnesses to that point was properly not credited below.

We confirm the sessions judge's order.

1854.

November 23.

Case of
ASHRUF ALI
and others.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, Esq., *Judges*.

SHEOPERSHAUD SONAR AND GOVERNMENT

versus

BEHAREE MISSER SEPOY.

Moorsheda-
bad.

1854.

CRIME CHARGED.—Wounding the prosecutor, Sheopershaud Sonar with intent to murder.

CRIME ESTABLISHED.—Wounding the prosecutor.

November 23.

Committing Officer.—Mr. C. F. Carnac, magistrate of Moorshedabad.

Case of
BEHAREE
MISSER.

Tried before Mr. D. J. Money, sessions judge of Moorshedabad, on the 1st September, 1854.

Remarks by the sessions judge.—The prisoner was proceeding to the collector's office, with a guard of other sepoys, on the 1st of August, 1854, about 11 A. M., and when passing the Gora-bazar on the pretence of some sand having got into his shoes stopped, while the other sepoys went on, and then going into the shop of the prosecutor wounded him in his breast with his bayonet and gave him some blows with his hand on his person. The magistrate very properly committed him on the charge of wounding with intent to murder. There was strong suspicion of the *intent* from the use of so dangerous a weapon, coupled with the fact of a previous dispute, but it did not amount to legal presumption.

The prisoner's
appeal was re-
jected on the
proof against
him.

The prisoner is a Government sepoy of the 7th regiment N. I. He had previously a dispute with the prosecutor regarding some money which he gave him to be converted into ornaments, and brought an action against him in the magistrate's court, where his case was dismissed and he was referred to the civil court for a civil suit against the prosecutor.

1854.

November 23

Case of
BEHARER
MISSER.

The witnesses, who witnessed the thrust of the bayonet, were the prosecutor's witnesses in the criminal case before the magistrate. Their evidence would of course be taken with more caution than the evidence of disinterested witnesses.

The prisoner is a very powerful man and had he intended to take the prosecutor's life could easily have done it. He only once struck him with the bayonet and then with his hands. I am inclined to believe that he intended to frighten or only slightly wound the prosecutor. It is impossible to ascertain clearly the intent, but as the witnesses who saw the deed and attribute an undue violence to the act, had previously given evidence in favor of the prosecutor against the prisoner, I think on such a point under such circumstances, the prisoner is entitled to the benefit of the doubt.

The officiating civil surgeon stated in his evidence that he thought the lungs had been penetrated, and was afraid at first that the wound was fatal. The prosecutor however entirely recovered.

The assessors, who sat with me on the trial, declared the prisoner guilty of wounding the prosecutor on full legal proof. I concurred in the finding and, with reference to the deadly weapon used, sentenced him as stated in the proper column.

Sentence passed by the lower court.—Imprisonment for the period of five years in banishment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) Having gone through the proceedings, we find the facts detailed by the sessions judge to be established by the evidence. The proof against the prisoner is conclusive of his guilt. We reject his appeal.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, Esq., *Judges.*

GOVERNMENT

versus

DEENOODASS BEARER ALIAS DEENOO FURASH.

24-Pergunnahs.

1854.

November 23.

Case of
DEENOODASS
BEARER *alias*
DEENOO FURASH.

The sentence
was reduced
and sessions
judge informed
that he
should have
stated on what
count he had
convicted.

CRIME CHARGED.—1st count, perjury in having on the 12th July, 1854, deposed on solemn declaration under Act V. of 1840, before the magistrate of the 24-Pergunnahs, in the case of theft of fish from the *jheel* or tank situated on the premises of Mr. A. Dick, in which Suroop Janna and others were defendants that “I and Bunmally went to the *jheel* to bring water, I saw three men with three nets catching fish, two men were sitting on the bank, of these two men who were on the bank one was Suroop the defendant here present, Bunmally seized a man, I was behind and had a *kulsee*, for which reason I was unable to seize him, Suroop was a servant of the house, therefore I knew him. He was not casting a net, only sitting on the bank. The *jheel* being under his (Suroop’s) charge, I consider that Suroop aforesaid having brought people from the outside was causing them to catch fish, on which account he (Suroop) was himself sitting there.” And in having again on the above date deposed on solemn declaration before the magistrate aforesaid that “when Bunmally seized one of the men with nets, I did not go to the place of occurrence, therefore I cannot tell what the prisoner now present then said. I did not see the prisoner (Suroop Janna) sitting on the bank of the *jheel*. I heard it from Bunmally, I did not see Suroop there at that time.” One of these depositions being false and both being contradictory of each other on a point material to the issue of the case; 2nd count, perjury in having on the 12th July, 1854, deposed on solemn declaration before the magistrate of the 24-Pergunnahs in the case of theft of fish from the *jheel* or tank situated on the premises of Mr. A. Dick, in which Suroop Janna and others were defendants, that “I did not see the defendant (Suroop) sitting on the bank of the tank.” Such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. H. Fergusson, magistrate of the 24-Pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of the 24-Pergunnahs, on the 28th July, 1854.

Remarks by the officiating additional sessions judge.—This is a deliberate and wanton act of perjury. The prisoner was sent

1854. in by the police to prosecute a party for theft of fish from a
 November 23. piece of water, belonging to his employer, Mr. A. Dick, of the
 Civil Service. The circumstances under which he committed the
 Case of perjury are detailed in the charge, and evince a lamentable dis-
 DERNOODASS regard of the sacred obligations of an oath and the vital im-
 BEARER *alias* portance of truth. The proof against the prisoner is complete,
 DEENOO Fu- and he made a full and unreserved admission of guilt before the
 RASH. magistrate. He pleads guilty before this court and supplicates
 its clemency, but I have no bowels of compassion for a crime
 which pollutes the stream of justice in our courts, desecrates our
 judgment-seats and stamps our tribunals of law with the brand
 of mockery.

Sentence passed by the lower court.—Seven years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) The Court see no reason to interfere with the conviction in this case, the prisoner has confessed his guilt throughout, but there is nothing in the circumstances of it, which calls for the highest penalty which a sessions judge can inflict for perjury. The Court accordingly reduce the sentence to three years' imprisonment with labor and irons.

The officiating additional sessions judge should have entered in column ten, under the head "crime established," the particular count on which he convicted the prisoner. The first count involved contradictory statements, the second direct perjury in swearing that he did not see what he had seen. The Court convict him upon the first count.

PRESENT:

A. DICK AND B. J. COLVIN, Esqs., *Judges.*

NUJJOOMOODIN AND GOVERNMENT

versus

Backergunge.

1854.

ASHOOREE (No. 1, APPELLANT,) SULLIM (No. 2, APPELLANT,) SUFDUR (No. 3,) AND GOLAM HOYDUR (No. 4 APPELLANT.)

November 24.

Case of
 ASHOOREE
 and others.

CRIME CHARGED.—1st count, burglary in which property to the value of Rs. 177-6-3, was carried off; 2nd count, knowingly and wilfully receiving and keeping stolen property.

CRIME ESTABLISHED.—Burglary.

The defences set up by the prisoners being found to be false, their ap-
 Committing Officer.—Mr. H. A. R. Alexander, officiating
 magistrate of Backergunge.
 Tried before Mr. C. Steer, sessions judge of Backergunge, on
 the 25th April, 1854.

Remarks by the sessions judge.—The house of the prosecutor was broken into during his absence on the night of 3rd February, and property to the amount of Rs. 177-6-3, carried off; coming home the next morning and ascertaining what had happened, the prosecutor accompanied by Abbas and a chowkeedar, Adoo, started off to give information to the police. Having to go out of their way in order to secure a boat, they were joined by Rum-janie chowkeedar, who also had had his weekly report to give to the thannah. While going by land to the house of the party, from whom a boat was expected, they heard the voices of men inside a patch of jungle. On Adoo chowkeedar calling out to them, they ceased talking, and as they would give no reply, he with his companions went inside the jungle. Having so done, four men ran out, leaving two bundles of clothes. They were seen to run into the compound of Ashoorree's house. The clothes being at once recognized by the prosecutor as part of his stolen property, he and the chowkeedar got the aid of the talookdars, and had Ashoorree and the other three prisoners seized. At first they denied the theft, but on the talookdar's promising to say nothing about it, if they delivered up the property, all four produced various articles of silver ornaments as their admitted share of plunder; all of which has been identified as belonging to the prosecutor.

The prisoners were kept in the talookdar's premises that day and night, the next day, the 5th, the prosecutor started with the prisoner and his recovered property for the thannah, which, owing to stormy weather, they did not reach till the following day, the 6th February.

The prisoners, Nos. 1, 2 and 3, confessed at the thannah; prisoner, No. 4, denied the charge as did all the prisoners before the magistrate.

Their defence at the sessions is that the charge is false, that the prosecutor and witnesses are in league to ruin them, and they name witnesses to prove that they are of good character.

It was a strange accident, which led to the discovery of the prisoners, but there is no doubt whatever of the truth of the story. The evidence against all the prisoners is presumptuously strong and holding them, in conjunction with the law officer, convicted of burglary, I passed sentence upon them as shown below.

Sentence passed by the lower court.—Each to be imprisoned for five years with labor and irons.

With reference to the above remarks, the Court: (Present Messrs. A. Dick and B. J. Colvin) recorded the following Resolution No. 786, dated 18th August, 1854.

The Court, having perused the proceedings above recorded, observe that the petitioner, Sullim, prisoner No. 2, in his petition of appeal, has stated that the prosecutor and he were at

1854.

November 24.

Case of
Ashoorree
and others.

peal was re-
jected.

Attention of
sessions judge
drawn to Sec-
tion 6, Re-
gulation IX.
1796.

1854. dire enmity, in consequence of prosecutor wishing to marry
 November 24. (*nikkah*) a woman who refused him and accepted petitioner,
 proof of which he *adds*, that since his imprisonment on this
 Case of charge of prosecutor, prosecutor had by force carried off the
 ASHOOREE woman, and he had complained to the magistrate, before whom
 and others. the case was pending.

Ashoorree and Golam Hoydur petitioners, prisoners Nos. 1 and 4, have likewise stated causes of enmity in their petitions of appeal, which are capable of verification on inquiry if true. It is to be regretted, that neither the magistrate nor the sessions judge asked the accused (except in the single instance of Sufdur) why they had been so falsely charged by the prosecutor, when they totally denied the charges, and also their confessions at the thannah, purporting to have been given in so much detail. The very singular circumstances, under which the prisoners were detected and apprehended, should have raised some doubts, and induced the utmost care in dealing with the case.

The petitions of appeal will be sent back to the sessions judge, who is requested to direct the magistrate to institute inquiry into the cause of malice alleged by the petitioners in them, and forward the result to this Court, with the least delay.

In reply to the above resolution, the following letter No. 49, dated 25th October, 1854, was submitted by the sessions judge.

I have the honor to submit, in pursuance of the orders of the Superior Court, conveyed in their resolution of the 18th August, 1854, No. 786, the result of the inquiries made in regard to matters alleged in the petitions of appeal of Ashoorree and others.

From the officiating magistrate to sessions judge No. 250, dated the 20th October, 1854.

I have the honor to acknowledge the receipt of your letter No. 179, dated the 25th August, forwarding a copy of the resolution of the Presidency Court of Nizamut Adawlut in the

* Prosecutor
 Nujjoomooddeen
versus

Sullim Khan,
 Ashoorree, and
 Golam Hoydur.

Case
 Burglary.

case noted in the margin,* together with the appeals in original of the prisoners, and directing me to submit to you the result of my inquiry into the cause of malice, alleged by the prisoners to exist between them and the prosecutor.

Immediately on the receipt of the above, I ordered the darogah of thannah Mirzagunj to make the necessary inquiries on the

† Nowaboodeen.
 Mahomed Ukbur.
 Lal Gazi.

Shazeer Mahomed.
 (Neighbours of Ashoorree and
 Sullim Khan, prisoners, residents
 of Bullabpore.)

spot, and he reports that having taken the depositions of the witnesses noted in the margin,† who are respectively near neighbours of the prisoners and the prosecutor, he could find no proof

Sheikh Mudde.
Sheikh Poran.
Suddurooddee Dye.
Suddurooddee 2nd.
Sheikh Lushkur.

(Neighbours of prosecutor Nuj-
joomoosdee, inhabitants of Jera
Koolly.)

Sheikh Birum (brother of late
Kalloo.)

Phelan, husband (*nikka*) of
Komola,—Oomed Ullee, brother
of Komola.

regarding whom a quarrel first arose between Sullim and the prosecutor, I ordered the darogah to send in for examination before me the woman Komola, together with all the other witnesses, who from relationship or propinquity would be likely to know the true facts of the case.

Although the prisoner, Sullim, has stated in his petitions of appeal that the prosecutor and he were at enmity, on account of his (Sullim) having succeeded in obtaining as his wife (*nik-ka-hee*)

* Komola.
Birmu.
Phellan.
Oomed Ullee.
Sheikh Mudde.
Sheikh Poran.
Suddurooddeen.
Suddurooddeen 2nd.
Sheikh Lushkur.
Lall Gazi.
Shozeer Mahomed.
Nowabooddeen.
Mahomed Ukbur.

It is true that the prisoner, Sullim, presented me with a petition on the 19th of August, 1854, (when he was in jail) on this charge of the prosecutor, complaining that the prosecutor had by force carried off the woman, Komola, his *nik-ka-hee* wife, from his house. On receipt of his petition I ordered the darogah to inform the woman that if she had been carried off by force or otherwise ill-treated, that she should come to me and present a petition to that effect. The darogah reported that he had informed the woman of my order, and she not appearing, nothing more was done in the case. When Komola was sent in by the darogah she deposed to having been married (*nik-ka-hee*) in the month of Poos last, to a man of the name of Phelan. From the depositions of Komola and the other witnesses that have been examined, there does not appear to be any truth in the statements set forth in the petition of appeal of the prisoner, Sullim.

The prisoner, Golam Hoydur, states in his petition of appeal

whatsoever of the truth of the statements contained in the petitions of appeal, presented by the prisoners to the Presidency Court of Nizamut Adawlut.

In consequence of the darogah having omitted to examine the woman, by name Komola, widow of the deceased, Kalloo, and said to be by the prisoner, Sullim, his own (*nik-ka-hee*) wife, regarding whom a quarrel first arose between Sullim and the prosecutor, it appears from the evidence of Komola herself and the other witnesses noted in the margin,* that no such alliance ever took place between the prisoner, Sullim and Komola.

Komola moreover denies all acquaintanceship with, or knowledge of, either the prosecutor or the prisoner, Sullim.

1854.

November 24.

Case of
Asmoonza
and others.

1854. that he is at enmity with the prosecutor, because in the month of Assin 1260, he (the prisoner) had brought a charge of theft against a man by name Jaheer, brother of the prosecutor.

November 24.
Case of
ASHOOREE
and others.

From the office records, it appears that on the 26th of Bhaadon 1260, the prisoner, Golam Hoydur, brought a charge of theft against Jaheer and some others. The case was investigated by the jemadar of the thannah, Mirzagunj, who reported that it was a false charge got up on account of a dispute regarding the boundaries of a certain piece of land, between the prisoner, Golam Hoydur, and the parties he accused. Since the receipt of that report on the 21st September, 1853, no further orders have been passed in the case.

Sheikh Soorut.
Sheikh Kalloo.
Ujjul Khan.

The witnesses noted in the margin,* who are near neighbours of Golam Hoydur, deposed before me that they did not

know what relationship or connection existed between the accused, Jaheer, and the prosecutor, Nujjoomooddeen, therefore there does not appear to have been any cause of enmity existing between the prosecutor and the prisoner, Golam Hoydur, when the charge on which the latter has been convicted was instituted.

The prisoner, Ashoorée, states in his petition of appeal that in the month of Poos, 1260, he petitioned the darogah of Mirzagunj to be appointed as chowkeedar of Bullubpore, in the place of Ramzanee chowkeedar, who was the adopted son or *dhurmopootur* of the prosecutor, Nujjoomooddeen. The darogah denies having ever received such a petition from the prisoner, but on the 17th Poos, 1260, an inhabitant of Bullubpore by name, Kutubmoola, petitioned against Ramzanee chowkeedar, complaining of the latter's carelessness and neglect of duty, and requesting another and better chowkeedar to be appointed in his place.

† Nawabooddeen.
Mahomed Ukbur.
Lall Gazi.
Shozeer Mahomed.

Moreover the witnesses noted in the margin,† deposed before the darogah to Ramzanee chowkeedar being no *dhurmopootur* or other connection of the prosecu-

tor. No cause of malice therefore seems to have existed between the prisoner, Ashoorée, and the prosecutor, Nujjoomooddeen.

I have the honor to return the petitions, that accompanied your letter under reply, and at the same time to forward, for

‡ Sullim Khan.
Golam Hoydur.

your inspection, the papers connected with the inquiries made by me. The prisoners‡ have this day

presented me with two petitions that I have also the honor to forward to you,

I regret that so great delay has occurred in completing the

inquiries directed to be made. It has been owing to the distance of the thannah from the sudder station and the necessity of sending for the witnesses and examining them myself after the darogah's local inquiries.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The defences set up by the petitioners, prisoners, having turned out false, after a careful inquiry by the magistrate, as directed by this Court, we see no reason for interference with their conviction and the sentences passed on them by the sessions judge.

The Court observe, for the future guidance of the sessions judge and of the magistrate, that one only of three witnesses named by the prisoner, Sullim, was examined at the trial in sessions, and the documents directed, by Section 6, Regulation IX. 1796, to be furnished by the magistrate, together with the proceedings to the sessions court, are not to be found on the record: nor is there any thing on record to shew that the omission was noticed by the sessions judge; or that he made any inquiry respecting the absence of the witnesses for the defence.

PRESENT:

J. H. PATTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

ARUZ MAHOMED (No. 6,) SHAMOOKA MANJEE (No. 7 APPELLANT,) AND BHENGOORAH NOSYA (No. 8.)

CRIME CHARGED.—1st count, highway robbery on the person of Hafez Noor Mahomed, and plundering cash and property, value Rs. 94; 2nd count, knowingly receiving and having in their possession property obtained by the said highway robbery.

CRIME ESTABLISHED.—Highway robbery.

Committing Officer.—Mr. A. W. Russell, magistrate of Rungpore.

Tried before Mr. G. U. Yule, officiating sessions judge of Rungpore, on the 30th June, 1854.

Remarks by the officiating sessions judge.—Hafez Noor Mahomed, witness No. 1, an inhabitant of Delhi, a fukeer of a very mild disposition and little bodily strength, was on his return from Behar, passing through the bazar of the village of Sonakasee, when the villagers began to tease and pull him about, ending at last by taking from him two pieces of cloth, for which they paid him thirteen annas, and then, according to witness's statement, they put him in charge of Shamooka Manjee, prisoner No. 7, who happened to be passing, whom they called a chowkedar and directed him to shew witness to the Dhurla ghat,

1854.

November 24.

Case of
SHAMOOKA
MANJEE
and others.

Rungpore.

1854.

November 24.

Case of
SHAMOOKA
MANJEE
and others.

Conviction
and sentence
passed by the
sessions judge
in a case of
highway robbery,
upheld in
appeal.

1854.

November 24.

Case of
SHAMOOKA
MANJKE and
others.

which he did, and they were ferried across by prisoner No. 6, Aruz Mahomed, some others being in the boat. After crossing, the prisoners Nos. 6 and 7 and others, took witness's bundle from him in spite of his opposition, and opening it, helped themselves to 5 *Ashrufes* and 14 Rupees, and then drove him away. He complained at the thannah, the jemadar went out and apprehended Aruz Mahomed, the ferryman, prisoner No. 6, on witness pointing him out as one of the robbers; he confessed, produced 2 *Ashrufes* and 2 Rupees, named Bhengoorah, prisoner No. 8, and others; Bhengoorah, prisoner No. 8, was then apprehended, confessed also and produced one rupee, acknowledging he had received two, of which he had spent one, and naming several parties and describing another, name unknown, as being concerned. The jemadar found no proof against the others, and could not ascertain who the unknown person was, but on the darogah going out, he learned from the villagers of Sonakasee that Shamooka Manjee was the person who had accompanied the fukeer to the *ghat*, and on apprehending him, he confessed, produced two *Ashrufes*, and named Hoorah, prisoner No. 9, and others; No. 9 was afterwards apprehended at the station, nothing was proved against him, and he was acquitted; (statement No. 8) prisoners Nos. 6, 7 and 8 also confessed before the magistrate; Nos. 6 and 7 accusing each other, and No. 8 allowing that he was present when the robbery took place and was compelled to accept two rupees; and their confessions there and in the mofussil (which were much to the same effect) were duly attested on the trial and the production of the money by them was fully proved. The identification (by witnesses, Nos. 1 and 2,) of the money taken in connection with the confessions, and the fact that two of the *Ashrufes* were of a peculiar description, said to be coined at Joypore in Rajpootana, was also satisfactory. The whole three prisoners were recognized by witness No. 1, as having taken a part in robbing him, and witness No. 22 proved that witness No. 7, Shamooka Manjee, was the person whom they had pointed out to the fukeer, when he asked the road to the *ghat*, and that the fukeer had gone away with him. In their answers at the sessions trial, prisoner No. 6, Aruz Mahomed, acknowledged the robbery to have occurred, and that he had received the two *Ashrufes* and two rupees as his share. No. 7 denied all knowledge of the affair, alleging he was a *pagul* and had been bewitched, &c. No. 8 confessed, as he had done before, that he came to the *ghat*, when the others were robbing the fukeer, had remonstrated with them and had finally been compelled to accept two rupees. The prisoners, Nos. 6 and 8, called no witnesses, those summoned by prisoner, No. 7, did not support his defence. The law officer convicted the prisoners, Nos. 6, 7 and 8, of the first charge, No. 6 on full legal proof, the others on violent presump-

tion. I concurred and passed the sentences mentioned, giving a much shorter term to No. 8, than to the others, as I considered that though present at and participating in the plunder, there were grounds for believing he arrived after it had begun and did not take an active share in it. The fact of nearly four-fifths of the plunder being found in the possession of prisoners, Nos. 6 and 7, showed who were the leaders.

Sentence passed by the lower court.—Nos. 6 and 7 to be imprisoned, with labor and irons, for five (5) years each, and No. 8 for one (1) year.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. H. Patton.) The prisoner (Shamooka Manjee) appeals against the sentence of the sessions court, but advances nothing in his petition of appeal calculated to impugn the propriety of that sentence. His admissions, both before the police and the magistrate, and the fact of his having produced two of the missing gold-mohurs from his house prove his complicity in the highway robbery beyond all question and doubt. The conviction and sentence are therefore upheld and the appeal rejected.

PRESENT:

A. DICK, Esq., AND SIR R. BARLOW, BART., *Judges.*

BUXOO MULLICK AND GOVERNMENT

versus

MUDUN MONNAH.

Midnapore.

CRIME CHARGED.—Wilful murder of his guard, Peeroo Mullick burkundaz, the brother of the prosecutor, Buxoo Mullick, in order to effect his escape, he being at the time a convict under sentence.

Committing Officer.—Mr. G. Bright, officiating magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 12th of January, 1854.

Remarks by the sessions judge.—This trial is supplementary to that held by my predecessor in the month of January, 1847. The particulars of the case are fully detailed in Mr. Raikes' report, No. 20, dated 3rd February, 1847, from which the following is an extract. "It appeared from the evidence in this case that the prisoners, who are four convicts of the Midnapore jail, were with another named Mudun Monnah given in charge of the deceased, who was a burkundaz of the jail, on the morning of the 19th of December last, and directed to plant trees in the Government school compound, which is about a stone's throw from the jail. On the return of the convicts to jail at the close of the day, these five men and the burkundaz were missing and

1854.

November 24.

Case of
SHAMOOKA
MANJEE and
others.

1854.

November 24.

Case of
MUDUN
MONNAH.

Prisoner convicted of the wilful murder of the burkundaz guarding him when working as a convict, sentenced to transportation for life.

1854.

November 24.

Case of
MUDHOO
MONNAH.

no tidings were heard of them till about eleven o'clock at night. At that time a report reached the thannah that a man with a Government badge near him was lying dead at a tank, about five miles from the town. Two police officers were despatched to the spot, and found the deceased, Peeroo Mullick, lying dead with his feet bound together, his hands tied behind his back, and some old pieces of cloth and '*newar*' knotted tightly round his neck, one of these was also passed round the root of a bamboo tree, under which he was lying. The fetters of four of the missing convicts were found in a pool or hole, near which the body was lying, and three bundles of bamboo twigs, a short *sickle* used by the convicts to cut these twigs, and a hollow bamboo with oil were also discovered in the immediate neighbourhood of the body, also the handle of a cutting instrument, the blade of which was afterwards found with the prisoners on their apprehension.

"The *post mortem* examination shewed that the man had died from strangulation, and, from the marks on the chest and abdomen, the medical man was of opinion he had struggled stoutly with his murderers. The old pieces of cloth and '*newar*' fastened round the neck, hands and feet of the deceased resembled the articles of this description which the convicts were accustomed to use.

"It was proved in evidence, that the deceased, Peeroo Mullick, had for some time been in the daily habit of attending the four prisoners as their guard, and that on the day of the murder a burkundaz and a gang of convicts were observed to cross the river, and proceed in the direction of the village near which the body was found. That a little boy named Damoo Ghose (whose age would not permit of my examining him) while looking for his master's cows, on the evening of the 19th December, perceived some one lying under a tree, who returned no answer when spoken to. That the master of Damoo Ghose and others, on hearing the cow-boy's report, proceeded to the spot and found the deceased lying dead, bound hand and foot, and strangled by pieces of cloth knotted round his neck. That these pieces of cloth were proved to be the cloth worn by the prisoners, and some *newar* to be the garters used by the prisoner Mudhoo Mundle, to support his fetters, and prevent their galling his ancles. That within a few yards of the body, the bamboo twigs cut by the convicts, and piled in heaps ready for conveyance, were found, and the fetters of the four prisoners discovered in the pool close by. That the place, where this murder was committed, was a dense jungle of bamboo trees, divided from the village by thick *pawn* gardens, and that robbery could not have been the object of the murderers, as a four anna piece and four pice were found upon the body. That the relatives of the deceased positively swear to three pieces of *capra*, which were in

the possession of the prisoners when taken, as the '*capra*' constantly worn by the deceased, and which he had on the day he last left his home to attend at the jail, that one of these pieces had been torn in halves, which was not the case when Peeroo Mullick wore it.

"The *futwa* of the *moulvee* convicts the four prisoners of the murder of Peeroo Mullick, on violent presumption" and declares them liable to perpetual imprisonment or even to suffer death at the discretion of the judge.

"In this finding I concur, for it is not only evident that the deceased must have been murdered by one or more of the prisoners, but the circumstantial evidence is so clear on this point, that it implicates them all as participators in the murder. In the first place, I feel convinced that the deed was premeditated, and the opportunity sought for in this way. The convict prisoners are all men of infamous character, and on this account were set to work near the jail: there is moreover a standing order of the magistrates, that whenever convicts are sent to work at a distance a double guard be sent with them. These were two difficulties these men had to get over to accomplish their purpose (*viz.*) to get to a sufficient distance and without a double guard. What was the exact inducement they held out to Peeroo Mullick to permit them to go so far is not known, but his brother and relatives declare he had no money with him when he left home in the morning, yet five annas were found in his waistcoat pocket when dead. This would be the sum the five convicts were likely to pay for any extra liberty granted. Some inducement must have been held out: for the mere purpose of cutting bamboo twigs could not have taken him so far, or in that direction, while the object of the convicts is obvious enough, namely the loneliness of the place where the murder was committed, and its immediate vicinity to a dense jungle extending for many miles, and thus affording a safe and easy retreat to escape into. Secondly, the deceased being a strong powerful man and these prisoners of greatly inferior strength, it is impossible he could have been mastered by one or two of them, and the manner of his death plainly shews that the overpowering force of numbers was employed to secure and strangle him. After the conclusion of the trial, I visited the place where the body was found, it is apparently the site of an old tank now studded with clumps of bamboos and brambles; on two sides, is a very large *maidan* and on the other, jungle and pawn gardens, which completely screen it from a straggling village at the edge of the jungle. About two or three yards from the spot, where the body was discovered, is a small hole or *pool* of water about eight or ten yards in circumference and containing water about a foot deep. In this *pool* the fetters of the four prisoners were discovered. The badge of the *burkundaz* was lying at his feet, and from this circumstance and the

1854.

November 24.

Case of
MUDUN
MUNNAH.

1854.

November 24.

Case of
MUDUN
MONNAH.

shady quiet nook in which he was lying, I think he must have put aside his badge and arms, and laid down to rest perhaps fallen asleep, in which helpless state he was doubtless attacked by the prisoners. As his feet were bound together, and his hands tied behind his back, and then three bandages knotted round his neck, there must have been three or four men engaged in securing and killing him, and as no cry was heard by those living in the village, where I think it might have been heard if often repeated, I conclude every *combined* precaution was taken by the prisoners to prevent resistance, and cause death as speedily as possible. The bundles of bamboo twigs, the remains of radishes they had been eating, the '*chunga*' of oil, the rags used by them to keep up their fetters, and lastly the fetters themselves thrown into the pool of water, were all within a circle of ten or twelve yards from the body, and supposing the fetters to have been taken off and concealed after the perpetration of the murder, and the deceased's clothes then removed from his person, there can be no doubt that each of the prisoners must have known of the murder. Having therefore arrived at the conviction that the circumstantial evidence in this case clearly implicates the prisoners, as the murderers of the deceased, Peeroo Mullick, and believing that so atrocious an outrage could never have been committed in broad daylight, but by men who had previously determined on it, and could rely on the assistance of each other and the unanimity of purpose that secured it, I consider the four prisoners guilty of the crime charged against them."

The prisoner pleads *not guilty* and states in defence that he was deputed by the burkundaz to get some fire, that on his return he could find no one, became alarmed and ran away. The prisoner's admission, corroborated by direct evidence, proves that the deceased, Peeroo Mullick, proceeded in charge of five prisoners, including the accused, Mudun Monnah, to cut bamboos at Narugun on the 19th December, 1846, and there is strong presumptive evidence that Peeroo Mullick met his death at the hands of these five persons, all of whom, from the circumstances set forth in the record, must have aided and abetted in the act. The assessors, with whose assistance the case was tried, declare the prisoner guilty of the charge preferred against him. I concur in this finding and recommend, with reference to the Sudder Court's resolution of the 7th April, 1847, that prisoner be sentenced to imprisonment with labor and irons in transportation beyond sea for life.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick and Sir R. Barlow, Bart.)

Mr. A. Dick.—I would sentence the prisoner as recommended. His answer, in defence, is evidently false. He must have seen what had occurred, as the murdered man was lying there, had he been absent as he states.

Sir R. Barlow.—The prisoner was one of the gang under the deceased burkundaz's charge working on the roads, he absconded with the others, they were apprehended and tried for the murder, and were sentenced by the Court in 1847. The prisoner has been at large from the day of the murder, and was only recently apprehended. His defence is unsupported and he cites no witnesses. I concur in the proposed sentence.

1854.

November 24.

Case of
MUDUN
MONNAH.

PRESENT :

A. DICK AND B. J. COLVIN, Esqs., Judges.

GOVERNMENT

versus

JHUREE LOLL.

Tirhoot.

CRIME CHARGED.—1st count, forging a *mooktearnamah* dated 25th January, 1854, purporting to be signed by Kebree Thakoor, Oomrao Thakoor, Toolah Thakoor, and Kashee Thakoor, &c., (twenty-nine persons); 2nd count, knowingly filing in the collector's office the said forged *mooktearnamah* in order fraudulently to obtain a sum of money on account of *malikanah* of the *maliks* of mouzah Burrumpore.

1854.

November 24.

Case of
JHUREE LOLL.

CRIME ESTABLISHED.—Knowingly filing a forged *mooktearnamah* in the collector's office in order fraudulently to obtain a sum of money.

Committing Officer.—Mr. A. E. Russell, magistrate of Tirhoot.

Tried before The Hon'ble Robert Forbes, sessions judge of Tirhoot, on the 7th September, 1854.

Remarks by the sessions judge.—This commitment, though not a trial in continuation, is connected with the same case of withdrawal of *malikanah*, from the collectorate of this zillah by means of forged documents which was the subject of trial No. 2, of sessions for July last.

The charge held to have been properly preferred by the collector, through the Government pleader, as the Government was the aggrieved party.

On the 25th of last January, the prisoner filed a *mooktearnamah* in the collectorate purporting to have been executed by Kebree Thakoor, Oomrao Thakoor and others, twenty-nine *maliks* of mouzah Burrumpore signed for all by Rughoobut Thakoor, one of that number, and attested by two persons named Bidesee Kapoor and Mungah Tutwah, with a petition to receive a sum of *malikanah* in deposit, which *mooktearnamah* was authenticated by one Hunooman Persaud, mohurrir of the collectorate, the witnesses to its execution being identified by the prisoner. On the petition an order was, on the same day, passed for reports from the *amanutnuvess* and *towjeenuvess*, as to the *malikanah*

1854. being or not being in deposit, and for comparison of the names and amount of the shares of the petitioners with the *malikanah* register, and on the 1st February, the *amanutnuvess* reported November 24. that the money was not in deposit, the *towjeenuvess* on that Case of that day also reporting that the sum of Rs. 1,799-13-2 *malikanah* JHURSE LOLL. having been in deposit had been paid, on the 2nd November preceding, to Pertaub Loll and Gunesh Suhai mooktears and was therefore not at credit. Upon this, with reference to the tenor of the above reports, the petition was the same day rejected and the case struck off. After its transpiring in the inquiry into the original case of drawing out the *malikanah*, that the *mooktearnamah* on the authority of which it had been paid, was forged, it was deemed necessary to inquire into this case also, and accordingly the prisoner having been examined on the 13th and 14th July, he admitted having written the *mooktearnamah* and stated that the petition had been written at the lodging of Nusub Dutt, the *towjeenuvess* of the collectorate, (under examination in another case,) at which time one Sonephool Raee, Nusub Dutt, and four of his (prisoner's) clients, *maliks* of Burrumpore, whose names he did not remember, the two witnesses to the *mooktearnamah* and himself were present; that the said Sonephool Raee signed for the witnesses, and that one of the four *maliks* (his clients) signed for himself and the rest. Afterwards the collector having summoned the alleged witnesses to the *mooktearnamah*, it turned out that one of them, Bideseo Kapoor had died in 1252, F. S., or eleven years before, to which effect his son Bheechook Kapoor, witnesses No. 1, gave evidence, and the other Mungah Tutwah, witness No. 2, distinctly denied either having witnessed any *mooktearnamah*, or that he had any acquaintance either with the prisoner or the other alleged witness Bideseo Kapoor.

Eventually the collector made over the case and parties to the magistrate, who having taken the evidence of the above two alleged witnesses to the *mooktearnamah*, and summoned the heirs of Rughoobut Thakoor, by whom that document purports to be signed, and three of the *maliks* of Burrumpore out of those who had given evidence in the former case, two of whom attended and gave evidence, committed the case for trial to this court.

* No. 1, Bheechook Kapoor.
 „ 2, Mungah Tutwah.

The witnesses marginally* named deposed as they had done in the collectorate and foudjary,

No. 1, that his father Bideseo Kapoor had died in 1252, F. S., and that the signature on the *mooktearnamah* was not his (witnesses) and No. 2, denied having witnessed the *mooktearnamah*, or that he knew the prisoner Jhuree Loll.

† No. 4, Loll Thakoor.
 „ 5, Lutchmann Thakoor.

Two witnesses, *maliks*† of Burrumpore, on behalf of twenty-nine of whom the *mooktearnamah*

purported to have been executed, denied having ever executed such a power, and deposed that Rughoobut Thakoor having died in 1255, F. S., eighteen others had died long before that year, one having died since the date of the *mooktearnamah*.

* No. 6, Ughores Pasban.

One witness, the gorait of Bur-rumpore,* gave evidence in corroboration of the statement of the two preceding witnesses of nineteen of the *maliks* having been long dead.

The prisoner, pleading *not guilty*, defended himself by urging that Nusub Dutt, having sent Sonophool Raee, called him (prisoner) to his lodging, having previously told him that he wanted him to write a *mooktearnamah* for some relations of his (Nusub Dutt's) caste, and he (prisoner) having accordingly gone to that person's lodging, the latter told him (prisoner) to write a *mooktearnamah* in his own name which he (prisoner) refused, saying that if it was a *bonâ fide* business, he would do it, but if it was a crooked business he would not. Upon this Nusub Dutt told him (prisoner) to do it upon his word, which he (prisoner) accordingly did. Four persons were sitting by whom Nusub Dutt pointed out to him (prisoner) as his client, and he (prisoner) wrote the *mooktearnamah* with his own hand and one of those four persons signed it, two others having witnessed it, he (prisoner) writing the names in the *mooktearnamah* as told him by Nusub Dutt from a book which he held in his hand, and when the *mooktearnamah* was ready he (prisoner) took it with the two witnesses to the collectorate, where he got it attested and filed. He had no witnesses to call.

The law officer's *futwa*, convicting the prisoner on the 2nd count, pronounces him liable to discretionary punishment by *tazeer* and in approval of this verdict and as remarked in the abstract report of the abovementioned trial No. 2, of sessions for July last, to the effect that "several other similar cases have recently occurred by which money has been fraudulently drawn from this collectorate," I felt that justice required for example's sake that the prisoner should not be sentenced to a lesser punishment than that which I have awarded him, viz. imprisonment for five years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) We consider the crime established against the prisoner. He refrained from calling any witnesses in defence, which he naturally would have done had his defence been true. He has thus totally failed to show that he himself had been imposed upon, and the fact of the *mooktearnamah* uttered by him being a gross forgery is fully proved.

We observe that this case was sent to the magistrate by the collector, who directed the Government pleader to prefer the charge against the prisoner, which he was quite competent to do, as Government was the aggrieved party.

1854.

November 24.

Case of
JHURR LOLL.

PRESENT :

H. T. RAIKES AND B. J. COLVIN, Esqs., *Judges.*

Cuttack.

GOVERNMENT AND GREEDHAREE BYSACK

1854.

versus

RASS PUNDAH.

November 25.

Case of
RASS PUN-
DAH.

The prisoner was sentenced to death with reference to the law (Section 4, Regulation VIII. of 1799.) by which it may be inflicted on accomplices in murder.

CRIME CHARGED.—1st count, wilful murder of Purrya, aged thirteen years, the son of Greedharee Bysack, prosecutor, for the sake of his ornaments; 2nd count, having stolen from the person of the said Purrya, gold and silver ornaments, to the value of rupees 20-13-7; 3rd count, having in his possession stolen property, knowing that it had been so obtained.

Committing Officer.—Mr. R. P. Harrison, magistrate of Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 18th October, 1854.

Remarks by the sessions judge.—The particulars of this case are as follows:—

On Wednesday afternoon, the 20th September last, the murdered boy Purrya, who was not quite thirteen years of age, returned home with his younger brother from school, and after placing his books in his house went at sunset, according to custom, to get *toolsee* at the Bulram Jeo *thakoor barree* (which is close by the prosecutor's house) and play with other boys, and not having returned at night when the family were going to partake of their evening repast, his father Greedharee Bysack and the other members of the family searched for him, both at the *thakoor barree* and in the village, but unsuccessfully. And at about 9 o'clock, when certain persons had resorted to Greedharee Bysack's house on hearing his lamentations for the loss of his child, the prisoner Rass Pundah who resides at, and is the *poojarree* of the *thakoor*, joined them and proposed that they should light torches and search for the child along the bank of the Ullunka river, in the direction of which Nobin Bysack, (witness No. 16,) the brother of the prosecutor, stated he in the evening heard the cry of a child, supposed to be one or two years of age, calling out '*malo baplo*,' and the said Nobin Bysack, Dhurmoo Bysack, Unam Patter, Gobind Patter and Bunmally Sahoo, conducted, it would appear by the prisoner Rass Pundah, went and searched along the *bund* near the river and in a *dhan* field, about three *beegahs* distant from the *thakoor barree* and the plaintiff's house, the body of Purrya was described by the prisoner saturated in blood with a severe *gash* across the side of the head near to the ear. The above persons then returned to the prosecutor's house, and his brother Nobin Bysack communicated

1854.

November 25.

Case of
RASS PUN-
DAH.

to him the death of his child, and afterwards called the chowkeelar Bushtum Mullick (witness No. 3,) who placed a watch over the body and gave information in the morning at the Hurryharpore thannah; and the darogah arrived about 10 A. M., and after examining and forwarding the body to the magistrate, arrested the prisoner Rass Pundah and four others, who were seen by Bushtum Mullick chowkeedar at the *thakoor barree* on the previous evening; and having put his hand on their breasts and discovered the prisoner to be in a state of considerable alarm, he suspected him, and after talking to him awhile, persuaded him to point out the ornaments belonging to Purrya, which he had buried in the ground under the eaves of *rushqee ghur* or cook house of the *thakoor*, and he then made a confession to the following effect, which he repeated with some little variation before the magistrate. That he did not himself kill Purrya, but on Wednesday morning at about two *ghurries* Bhuj Sahoo, came to him at the Bulram *thakoor mundir* and consulted with him to kill Purrya that evening and steal and divide his ornaments, and he agreed to do so; that in the evening as arranged, Bhuj Sahoo came to the *thakoor mundir* and inquired where Purrya was, and on his, the prisoner's, telling him he was playing outside the *mundir*, Bhuj Sahoo went for his sword which he brought wrapped up in his clothes and they then called Purrya to accompany them to the bank of the Ullunka river, to which they proceeded in the following order, viz., first Purrya, next Bhuj Sahoo, and last of all the prisoner. And after they had gone a short distance Bhuj Sahoo told him, the prisoner, to keep watch on the bund that no one was coming while he himself took the child in the direction of the river; and he accordingly did so, and on hearing Purrya call out three times *malo baplo* as he fell to the ground, he, the prisoner, ran to the spot and found Bhuj Sahoo had killed him and was dragging him by the hair of the head along the cow-path towards a field of *bealee dhan*, and on his following in their track, the blood on the deceased adhered to his feet; and he stood by the field while Bhuj Sahoo stripped the body of its ornaments which he gave to the prisoner, saying they would afterwards divide them; and he took them and buried them in the *thakoor barree*, whence he had produced them; and at the conclusion of his confession he admitted that the sword found in a compartment of the cook-house of the *thakoor*, was the instrument with which the deceased was killed.

Before the magistrate the prisoner stated that he himself fetched the sword from his house, (i. e. the *thakoor barree*,) and concealed it in his clothes, and gave it to Bhuj Sahoo unknown to Purrya, as they were proceeding in the direction of the river, and that he saw Bhuj Sahoo strike the deceased two blows, the first, while he was on the bund, across the right side of his head

1854. and the other, after he had ran up to the spot where they were, across the neck.
- November 25. Before the court the prisoner pleaded *not guilty* to all the charges. But at the close of the trial when called on to state any thing he might wish to urge in his defence, he said that at two *ghurries* or about 8 P. M. on Wednesday, the day of the murder, Bhuj Sahoo asked him for the loan of his sword to take with him when he went to the river-side, and when he brought it back, it was wet. And he also entered into a confused account of his accompaying Nobin Bysack and the others in search of the deceased when he was reported to be missing, and of his subsequent apprehension by the police darogah, which on the whole tends to inculcate rather than exculpate him. He likewise stated that the witnesses for the prosecution had given false testimony against him, but cited no witnesses in his defence, and on his attention being called to that part of his statements before the darogah and the magistrate, which relate to his producing the deceased's ornaments, he denied that he had made such statements.

Witnesses, Dam Sahoo, No. 1, Narian Sahoo, No. 2, and Purmee Sahoo, No. 8, deposed to the confession of the prisoner before the police darogah having been voluntarily made.

Witnesses, Lalla Rughoobar Ram, No. 9, and Muzohur Alli, No. 10, deposed to the same effect regarding his confession before the magistrate.

Dr. G. S. Scott, the officiating civil surgeon, deposed that on his *post mortem* examination of the body of Purrya, he found two severe incised wounds, one on the right side of the head, and the other on the left side of the neck, which he concluded had been inflicted by a sword or some similar weapon used with great force, and which were the cause of death.

The law officer convicts the prisoner Rass Pundah of the crimes charged, and declares him liable to punishment *accoobut* : and in the conviction of the prisoner I concur ; and as he distinctly admitted in his confessions, which there is no reason to doubt were otherwise than voluntarily made, that he consulted in the morning with Bhuj Sahoo to kill Purrya, and that in the evening he called him and accompanied him and Bhuj Sahoo to the *bund* or embankment within a few paces of the spot where Bhuj Sahoo murdered him, and there kept watch, to give the alarm in the event of any person approaching, and afterwards followed the body to the field where it was stripped of its ornaments which he received and buried, and subsequently produced ; and he moreover furnished the weapon with which the deceased was killed, and which was also found in his house. I consider the crime of being an accomplice in the wilful murder of Purrya to be clearly and fully proved against the prisoner Rass Pundah,

and seeing no extenuating circumstances in his favor, I would sentence him to undergo the last penalty of the law.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and B. J. Colvin.) The full and accurate account given by the sessions judge in his letter of reference renders further detail of the case unnecessary. The prisoner has been convicted as an accomplice in wilful murder, and the sessions judge proposes that a capital sentence should be passed upon him. This, under the circumstances of the case, we consider fully warranted. The prisoner admits that he consented to the murder of the child, that he provided the weapon for its perpetration, that he watched near the spot, while it was committed, to prevent interruption or surprise, and after its completion that he received and concealed the stolen ornaments, and the weapon in his house. Great doubts arise as to the truth of the prisoner's accusation that Bhuj Sahoo actually committed the crime; nothing whatever has transpired to implicate him in any way and he satisfied the police, (who appear to have acted promptly and honestly in the investigation,) that he was otherwise engaged at the time and could not have rendered any assistance in the murder; and the magistrate directed his release from bail, the inference follows that the prisoner himself alone did the deed; but as the law, by Section 4, Regulation VIII. of 1799, may equally take its course, whether the prisoner is regarded as principal or accomplice, when the complicity is so direct and criminatory, we sentence the prisoner to suffer death.

1854.

November 25.

Case of
RASS PUN-
DAH.

PRESENT:

H. T. RAIKES AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT AND LALL MAHOMED

versus

SHEIKH JAMAL.

Mymensingh.

1854.

November 25.

CRIME CHARGED.—Wilful murder of Zumeer Fokeer.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Case of
SHEIKH
JAMAL.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 10th Oct. 1854.

Remarks by the sessions judge.—The circumstances of the case are briefly these. A dispute existed between the deceased and the prisoner, regarding the crops of a field, and on the night of occurrence, the deceased on passing by the prisoner's house, he called him in, when an altercation ensued between them, and each having used abusive language towards the other, the pri-

The prisoner was convicted of murder, but not of so wilful and deliberate a nature as to incur the penalty of death.

1854.

November 25.

Case of
SHRIKH
JAMAL.

soner became enraged and wounded the deceased on the left shoulder, back and below the neck with an axe (*korallee*) which terminated in the death of the deceased, seven days afterwards, and the prisoner was immediately secured by the village chowkeedar, but information was not given at the thannah, until the third day, as they entertained a hope of the deceased's recovery. The particulars of the case will be clearly shewn from the following abstract of the evidence.

The prosecutor, Lall Mahomed, deposed that on the 17th or 18th of Bhadro last, at about an hour after night fall, the prisoner, Jamal, struck the deceased, his nephew, with an axe on account of a dispute having existed between them, regarding the paddy of a field. The deceased was, at the time, on his way to visit his friend, one Elleem, and as he was passing by the prisoner's house he (the prisoner) called him inside and desired him to sit down, when in conversation, the prisoner asked the deceased what he had got from his *juyman*, the deceased replied that he had got some 5 or 6 Rs. and was going to Elleem to repay him a loan of 2 or 2½ Rs. The prisoner then immediately went into his house and suddenly came back with an axe, concealed under a cloth with which he had covered himself and began abusing him, saying that he could repay other loans but would not give him the price of two and half *kottahs* of paddy, which he owed him. The deceased replied that he had already paid him 5½ annas, the price of the paddy, when he lodged a complaint about it before the zemindar. The prisoner then interrupting him and abusing him for not paying the amount, struck the deceased a blow with an axe on his left shoulder, and as the deceased was attempting to escape, he gave him two more blows, one on the back, and the other above the loins. The deceased then fell down senseless, and his mother and uncle, hearing the noise, came to the spot and took him to his house; that he (the prosecutor) lives at a distance and heard the above circumstance from the deceased at noon on the day following; that there existed no other ill-feeling between them than the dispute regarding the paddy.

* Jurreep.

Witness, No. 8,* states that hearing a noise, he went to the spot and saw the axe in the prisoner's hand and that the deceased was lying on the ground senseless with three wounds, one on the left shoulder and two on the right side of the back, and heard from the deceased's mother that the prisoner had wounded the deceased.

† Shaheboollah.

Witness, No. 3,† states that on the night of the occurrence, at about half a *pahur* of the night, hearing a noise, he went to the prisoner's house, and on entering into the inner apartment, saw an axe in the prisoner's hand, which he snatched from him and

afterwards saw Zumeer lying in the yard in a wounded state, and Zumeer told him that Jamal had struck him with an axe, and Jamal when asked also acknowledged before him that he had wounded Zumeer with an axe as he abused him.

* Jumun Fokeer.

Witness, No. 9,* says that he saw Zumeer running towards his compound, and was told by him that Jamal had wounded him, and he also states that he saw three wounds on his body.

† Lakhoo.

Sheikh Pagul.

Sheikh Mojhooyollah.

Witnesses, Nos. 1, 11 and 2,† deposed that they saw Zumeer lying wounded in his yard and heard from him that Jamal had wounded him, and also stated that Jamal acknowledged before them that he wounded the deceased.

‡ Kowcha.

Belhitram.

The other two witnesses, Nos. 5 and 12,‡ also supported what has been deposed to by the

other witnesses.

The civil assistant surgeon, who examined the body, deposed on oath that the deceased's death was caused by inflammation of the right lung, the effect of an incised wound on the back, two inches in length, just below the neck, a little on the right side dividing a portion of the first rib and penetrating the chest.

The prisoner admitted, both before the police and the magistrate, having wounded the deceased with an axe on account of a dispute existing between him and the deceased, regarding the crops of a field. In this court, he urged that Zumeer entered his house and abused him and consequently he struck him two blows on the back with the blunt side of an axe, he acknowledged his foudary confession, but when his mofussil confession was read over to him, he stated that he did not say that he wounded Zumeer, but only that he struck him two blows with the blunt side of the axe, but he declined to examine any witnesses.

The jury, who sat with me on the trial, gave in a verdict of guilty against the prisoner and convicted him of the crime charged. I also agree in this verdict, I consider the murder clearly proved. There was not the slightest provocation, and from the fact of the prisoner using such a murderous weapon as a *koorallee*, and having inflicted three wounds on the deceased with it, there is not the slightest reason for doubting that he intended to murder the deceased, and seeing no extenuating circumstances in his favor, I would recommend a sentence of death being passed upon him.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and B. J. Colvin.) We do not find that what, if established, would have formed a very aggravating feature in this case, is proved by the evidence, viz., that the prisoner went into

1854.

November 25.

Case of
SHEIKH
JAMAL.

1854. the house and came back with the axe concealed under his cloth. The deceased in his own deposition before the darogah does not state it. The prisoner, however, acknowledged before the magistrate that being greatly provoked by the abuse deceased gave him, he fetched the axe from a heap of grain and struck the deceased. There is no reason whatever to believe that when he called the deceased into his house he had any intention of injuring him; but their old dispute becoming the subject of discussion, the prisoner gave way to sudden passion, in the heat of which he seized the weapon and recklessly dealt the blows, which proved in the end mortal. Considering the act of the prisoner to amount to murder, although not of so wilful and deliberate nature as to call for a capital sentence, we sentence him to imprisonment in transportation for life.
- November 25. Case of SHEIKH JAMAL.

PRESENT :

H. T. RAIKES AND B. J. COLVIN, Esqs., *Judges*.

GOVERNMENT

versus

Jessore.

DOORGACHURN CHUCKERBUTTY.

1851.

CRIME CHARGED.—Wilful murder of Seela Boistomi.

Committing Officer.—Mr. O. Toogood, magistrate of Jessore.

November 25.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 8th November, 1854.

Case of
DOORGA-
CHURN
CHUCKER-
BUTTY.

Remarks by the sessions judge of Jessore.—From the evidence of witnesses* and from the confessions of the prisoner before the police and before the magistrate (which have been duly attested), it appears that the deceased had lived with the accused for some years. Seela, on the morning of the 9th October, used foul language, because Doorgachurn did not go to Gouripore, as he had promised. He became angry and struck her over the head with a *koorallee*, she fell. He threw the weapon down and fled. Witnesses Nos. 1 and 2, did not overhear the words used, but they witnessed the blow, and seeing prisoner run away, they ran to the spot and found Seela dead, with her head fractured.

Prisoner convicted of murder in the heat of blood, was sentenced to imprisonment for life in transportation, agreeably to the precedents cited.

† Setum Bewa.

‡ Rammohun.

§ Mooktaram.

Witness, No. 16,† also saw prisoner running away, witness, Nos.

17‡ and 18,§ also came up after the fact and saw the corpse and

the blood-stained *koorallee* near it, and heard that prisoner had killed the deceased and ran away.

Witness, No. 16, went off and gave notice to Modoo Sircar,

No. 3, Moiram.

„ 4, Nuki.

who sent witnesses, Nos. 3* and 4,† who found prisoner lying down in some thatching grass

with his teeth clenched and stupified.

Witness, No. 3, went off to the thannah, whilst witness No. 4, remained with the prisoner.

The mohurrir came that evening, and held an inquest in the presence of witnesses, Nos. 5 and 6,‡ who accompanied the corpse to the station.

‡ No. 5, Govind.

„ 6, Nilmony.

§ Witness No. 9, Kalachand.

„ „ 10, Nemai.

„ „ 11, Turufdi.

|| Witness No. 8, Alibux.

The next morning the prisoner confessed before the mohurrir. §

Owing to the absence of Dr. Palmer, the body was examined by the Native Doctor,|| who de-

scribes the wound as “on the left temple and cheek, the bones of which were broken, the frontal bone, the brains, the left eye and the left side of the nose displaced,” and declares that it must have been caused by some heavy weapon, and must have been the cause of death.

§ Witnesses, Nos. 9, 10, 11 & 3. In the mofussil confession, § the prisoner said “he and Seela were seated in the verandah of his *mundub ghur*, when he, being irritated at what she said got up and *seized the koorallee* which was in the verandah and then *struck* her with it and threw it away. He saw her head was broken and ran away ten or fifteen *russees* and fell down from fright in some long grass, and witnesses, No. 4, and others came up and took him near his house, &c.”

¶ Witness No. 12, Auckiloodor.

„ „ 13, Goopenath.

„ „ 14, Iradut.

In the foudjary, ¶ he professes that he “*had a koorallee in his hand and was going out of the verandah to cut wood*, Seela was eating betelnut, and used foul language. Being angry he *thrust the koorallee* (which was in his hand) at her head. Seeing blood flow, he ran into the grass and fell down with his teeth clenched through fright, adding that he had eaten *gunja* during the night, but could not state if he was labouring under the effects of it at the time.”

Here he says “Seela threatened to kill herself and seized the *koorallee*. He tried to take it from her, and cannot tell whether the wound was inflicted by his hand or hers; seeing blood flow, he ran away through fright into the grass and was found by witnesses, Nos. 3 and 4.” This lame defence is not creditable, considering the severe nature of the wound, and is at variance with the facts mentioned by the eye-witnesses as well as with the previous confessions.

1854.

November 25.

Case of
DOORAA-
CHURN
CHUCKER-
BUTTY.

1854. The jury give a verdict of guilty of wilful murder. In this I coincide. As the offence* was committed in the heat of blood, at the time of altercation, I propose to sentence the prisoner to perpetual imprisonment.
- November 25. * P. 661, N. A. R. 30th October, 1852.
- Case of DOORGA-CHURN CHUCKER-BUTTY.
- Remarks by the Nizamut Adawlut.*—(Present : Messrs. H. T. Raikes and B. J. Colvin.) We convict the prisoner of murder, and sentence him, under the circumstances which have been fully and clearly detailed by the sessions judge, agreeably to the precedent cited by that officer, and that of the case reported at page 664 of the Nizamut Reports, for May last, to imprisonment in transportation for life.

PRESENT :

H. T. RAIKES AND B. J. COLVIN, Esqs., *Judges.*

RAM COOMAR BHOOWALE AND GOVERNMENT

versus

TRIAL No. 2.

SHEIKH SHAKER (No. 1.) SHEEBNATH DOSS (No. 2.) SHEIKH BHAKOO (No. 3.)

TRIAL No. 3.

Dacca. SHEIKH KADER (No. 13, APPELLANT), MAUGUN MUNDLE (No. 14, APPELLANT), GOPEENAUTH ROY (No. 15.)

1854. CRIME CHARGED.—*Trial No. 2*, 1st count, Nos. 1 to 3, riot wherein Bhuggeeruth Bhoocemallee was mortally wounded; 2d count, illegally opposing the police in the execution of their duty.

November 25. Case of SHEIKH KADER and others.

Trial No. 3, 1st count, Nos. 13 and 14, affray wherein Bhuggeeruth Bhoocemallee was wounded and died of the wound; 2d count, illegally opposing the police in the execution of their duty, No. 15, being present, aiding and abetting in the above crimes.

The appeals of the prisoners were rejected as it was clearly proved that they were guilty. Sentence confirmed also on a non-appellant.

CRIME ESTABLISHED.—*Trial No. 2*, being accomplices in a riot, in which Bhuggeeruth Bhoocemallee was killed.*Trial No. 3*, Nos. 13 and 14, affray wherein Bhuggeeruth Bhoocemallee was wounded and from the effects of which he died on the following day, No. 15, aiding and abetting in the above crime.

Committing Officer.—Moulvee Zynooddeen Hossein, deputy magistrate of Manikgunge.

Tried before Mr. S. Bowring, sessions judge of Dacca, on the 16th June and 19th September, 1854.

Remarks by the sessions judge.—Trial No. 2. This charge was first tried on the 15th and 16th June last, since which the prisoners, now in court, have been apprehended. 1854. November 25.

* Nos. 1, 2, 3 and 4. The witnesses* proved the presence of the prisoners at the affray all armed, and that one Sheebnath (prisoner No. 2,) slightly wounded the deceased, none of the parties present seem to have been leaders in the riot. Case of SHRIKH KADER and others.

The prisoners pleaded *alibis*, which they were unable to prove. The city cazee, who sat with me on the trial, convicted the prisoners of being accomplices in the crime charged, in which *futwa* I concurred and passed the same sentence as on the former occasion.

The party to which the prisoner belonged was deliberately assembled for an attack, I may refer to my letter* No. 399, of 16th June, 1854.

Trial No. 3. The principal witness, Kamal M. Sh, No. 1, a tehsildar, stated that having heard of some *latteals* collected by a neighbouring zemindar, he (the tehsildar) made an application to the darogah for the assistance of the police. This being refused, he proceeded to complain to the magistrate, when meeting the thannah jemadar, he went with him to Agla, a village within the limits of his employer's estate. On the same day, an alarm having been given of the ryots' land being ploughed by the other party, the police and some ryots went to the spot, where the *latteals* were assembled, when one of these, the prisoner, No. 15, called out "*mar*," and the ryots and police seem to have retreated. In doing so, the deceased, Bhuggeeruth, fell and was wounded with a *soolfee*, or spear, by the prisoner, Ram Churn No. 12, of which wound he (Bhuggeeruth) died the following day.

The facts, as regarded the disturbance, and the wounds received by the deceased, were fully proved by the witnesses, Nos. 2 to 6 and 27, and corroborated by Nos. 7 and 8, before whom the wounded man's deposition had been taken by the police.

The civil surgeon ascribed the death of the deceased to inflammation arising from the wound inflicted on him.

All the prisoners were recognised as having been present (with others not apprehended) at the time the disturbance took place, they all pleaded *not guilty* and attempted to prove *alibis*, but the witnesses for the prisoner, No. 13, denied all knowledge as to where this person was on the day of the occurrence; those for No. 14, said he was in his own house at noon, but this is quite compatible with his having been present at the disturbance at

* Vide Nizamut Reports for July 1854, pp. 35 and 36, remarks of sessions judge in case of Ram Churn Mundle and others.

1854.

November 25.

Case of
SHEIKH
KADER and
others.

8 or 9 o'clock. The witnesses for the prisoner, No. 15, said he had been at his own village, a day's journey distant, but this, from his own two fellow-villagers, ought not to weigh, in my opinion, against the direct evidence for the prosecution.

The law officer convicted the prisoners, Nos. 13 and 14, on the 1st count, and No. 15 of aiding and abetting, I agree with the *futwa* in regard to these prisoners.

Sentence passed by the lower court.—*Trial No. 2*, Nos. 1 to 3, each to be imprisoned for the period of five years with labor and in irons.

Trial No. 3.—Nos. 13, 14 and 15, each to be imprisoned with labor and irons for the period of five years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and B. J. Colvin.) This case was before the Court on a previous occasion, having been sent up by the sessions judge of Dacca for enhancement of punishment on a prisoner named Ram Churn Roy, on whom a sentence of fourteen years' imprisonment was, on 7th July, 1854, passed. The prisoners now appealing and others were sentenced by the sessions judge to imprisonment for five years with labor in irons. We find the evidence of the eye-witnesses regarding the presence and participation of the prisoners appealing, inclusive of Sheikh Kader and Maugun Mundle, (see letter 623,) and of Sheebnath another, who has not appealed, to have been full and satisfactory and consistent throughout, and in our opinion completely establishes the guilt of the prisoners, including Sheebnath, as found by the sessions judge; and seeing no ground for interference, we reject this appeal, confirming the sentence passed by the lower court on all the prisoners.

PRESENT:

A. DICK AND B. J. COLVIN, Esqs., *Judges.*

PERU PATNEE AND GOVERNMENT

versus

SHEIKH ANEES.

Sylhet.

CRIME CHARGED.—Forcibly committing sodomy on the person of the prosecutor.

1854.

CRIME ESTABLISHED.—Forcibly committing sodomy.

November 28.

Committing Officer.—Mr. T. P. Larkins, officiating magistrate of Sylhet.

Case of
SHEIKH
ANEES.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 3rd July, 1854.

Remarks by the sessions judge.—All parties concerned are convicts. The prosecutor states that during the hour in the middle of the day, allotted to the working prisoners for rest, he had gone to sleep under a tree, when the prisoner Anees suddenly seized upon him and forcibly committed sodomy on his person. That his cries brought up other convicts who saw the transaction, and that in consequence of his resistance, the prisoner bit him savagely in the arm. Two witnesses (prisoners) depose to seeing the parties in such a situation as to convince them that the crime was committed, while two depose to examining the person of the prosecutor and to having seen marks which led them to form the same conclusion.

Prisoner acquitted, the evidence against him being unsatisfactory.

Before the magistrate the prisoner stated that the prosecutor had spoilt some bricks he was making, and that a quarrel ensued and that hence he and the prosecutor were seen struggling together on the ground, while before this court he denies that they struggled together at all, and urged that the charge was a false and malicious one. He called no witnesses in support of either of his stories.

The assessors convict the prisoner of the crime charged and in this verdict I concur. The prisoner has been three times previously charged, since he has been in jail, with this crime, has been twice acquitted from the insufficiency of the evidence, and in one case the prosecutor was punished for a malicious charge. Such is his character, however, that it has been considered necessary for the last two years to shut him up at night in a cell by himself.

Sentence passed by the lower court.—Seven years and in lieu of stripes more two years, total nine years' imprisonment with labor in irons.

With reference to the above remarks the Court (Present:

1854.

November 28.

Case of
SHEIKH
ANEES.

Messrs. A. Dick and B. J. Colvin,) recorded the following resolution, No. 857, dated 8th September, 1854.

The Court, having perused the papers above recorded, connected with the case of Sheikh Anees convict, observe, from the report of the jail darogah, that he was informed of the crime perpetrated by the prisoner on the evening of the day, that is, on the 24th June, yet he did not report it to the magistrate till the 29th June, five days after. It does not appear that any notice of this culpable delay was taken either by the magistrate or the sessions judge. Again the fact of the examination of the person of the prosecutor by two of the prisoners in jail, witnesses Nos. 3 and 6, must have been known to the burkundaz who, the witnesses say, had charge of the informant, prosecutor, at the time; yet he has not been summoned to corroborate their depositions. As the whole of the evidence against the prisoner consisted only of testimony of prisoners, the burkundazes or chuprassies in charge of the prisoners, who could have spoken at all to the alleged occurrence of the crime, should have been carefully examined. The Court further observe that the sessions judge had stated the crime to have been perpetrated under a tree; whereas the evidence shows that it occurred in a hut used for keeping unburnt bricks and lime.

The Court therefore direct that the depositions of the jail darogah be taken to account for the delay, and of the burkundazes who were in charge of the jail prisoners when the occurrence took place. The accused will then be called upon for a new defence, and the assessors for another verdict. The sessions judge will likewise ascertain whether, as alleged by the accused in his defence, the eye-witnesses are brothers or relations of the person, who twice charged the accused with this very crime, and was punished for a false and malicious complaint.

The sessions judge will also account for the discrepancy between his statement and the depositions of the witnesses regarding the place of occurrence of the act charged.

In reply to the above resolution, the following letter No. 60, dated the 18th November, 1854, was submitted by the sessions judge.

I have the honor to inform you that in compliance with the resolution of the Court of Nizamut Adawlut, No. 857, dated the 8th September last, I have this day examined the jail darogah and one burkundaz in the case of Sheikh Anees.

The jail darogah deposes that on the date of the alleged crime, the prosecutor complained to him that Sheikh Anees had beaten him, but that early the next morning he asserted he had forcibly committed the crime charged against him, and that he believes that the delay which ensued in reporting the circumstance to the magistrate was occasioned by holidays.

Mooluk Singh burkundaz deposes that he was some distance

off from the prosecutor when he heard his cries, but that he learnt from the prosecutor that Anees had committed the crime charged. Both he and Gour Singh his fellow-burkundaz have been suspended by the magistrate for their neglect in this case, and Gour Singh cannot now be found, so that I have been unable to take his deposition.

The prisoner Anees has nothing more to urge in his defence than what was advanced by him when the case first came on for trial.

The assessors convict the prisoner of the crime charged and in this verdict I concur. •

I am unable to explain how it happened that I have in my report stated that the crime was perpetrated under a tree, for my note book records it to have taken place in a hut. I regret that the error should have occurred.

I directed the magistrate to ascertain if the eye-witnesses are relatives of the person who twice previously charged the accused with this crime, and he reports that they are quite unconnected.

The original papers are herewith submitted. This inquiry has been delayed in consequence of the illness of one of the assessors, and he was only able to attend court this morning for the first time, since the receipt of the Court's resolution.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The depositions of the jail darogah and of the burkundaz Mooluk Singh are extremely unsatisfactory. The negligence of the darogah is unaccountable, if the charge was subsequently made as he states; the prisoner at first complained to him merely of a beating. The conduct too of Mooluk Singh and of Gour, who, as he says, actually witnessed the crime, is so extraordinary that little confidence can be placed on the truth of his testimony.

The sessions judge has omitted to take the evidence of the burkundaz, who had charge of the prosecutor when his person was examined by two of the prisoners' witnesses, Nos. 3 and 4, as testified by them.

The Court, not satisfied with the evidence against the prisoner, acquit him of the charge, and annul the sentence passed on him.

1854.

November 28.

Case of
SHRIKH
ANEES.

PRESENT :

A. DICK AND B. J. COLVIN, Esqs., *Judges.*

ALIMUDDIN

versus

KALOO ALIAS KALACHAND SURDAR (No. 2,) ABBAS ALIAS ASHRUFF (No. 3,) SOLIMUDDIN ALIAS SOLIM (No. 4,) PANJOO KHAN (No. 5,) RAMKANNYE GHOSE (No. 6,) BUKSHOO KHAN (No. 7,) MEHAR KHAN (No. 8,) KAZIMUDDIN DYE (No. 9,) EKABUR ALIAS AKBUR KHAN (No. 10,) NAZIR MAHOMED (No. 11,) NAZIR MAHOMED DYE (No. 12,) NOWKURREE HOLDAR (No. 13,) NAZEEMUDDIN (No. 14,) MOOLYE DYE (No. 15,) BECHOO KHAN (No. 16,) SOLIM KHAN (No. 17,) GOPAL KHAN (No. 18,) SHEIKH ASHKUR (No. 19,) NUSSURUDDIN (No. 20,) SHUMIZUDDIN (No. 21,) BECHOO KHAN (No. 22,) ALLADDEE (No. 23) AND AZIDOO LAH (No. 24.)

Tippurah.

1854.

November 28.

Case of
KALOO *alias*
KALACHAND
SURDAR and
others.

The prisoners were convicted and sentenced, although some part of the evidence against them was rejected as untrustworthy.

CRIME CHARGED.—1st count, dacoity at night, at the house of the prosecutor, and plundering therefrom property belonging to him, valued at rupees 119-4-6; 2nd count, receiving and retaining in their possession property valued at rupees 65-14-3, obtained by the above dacoity, knowing it to have been such; 3rd count, attacking the prosecutor's house at night, and plundering therefrom property belonging to him, valued at rupees 119-4-6; 4th count, receiving and retaining in their possession property valued at rupees 65-14-3, obtained by the above plundering, knowing it to have been such.

CRIME ESTABLISHED.—Attacking and plundering the prosecutor's house at night, and of receiving and retaining in their possession property valued at rupees 65-14-3, obtained by plunder, knowing it to have been such.

Committing Officer.—Mr. E. Sandys, magistrate of Tippurah. Tried before Mr. H. C. Halkett, officiating sessions judge of Tippurah, on the 3rd June, 1854.

Remarks by the officiating sessions judge.—Here are four charges against the prisoners, viz., 1st, dacoity at night, at the house of the prosecutor, and plundering therefrom property belonging to him, valued at rupees 119-4-6. 2nd, receiving and retaining in their possession property valued at rupees 65-14-3, obtained by the above dacoity knowing it to have been such. 3rd, attacking the prosecutor's house at night, and plundering therefrom property belonging to him, valued at rupees 119-4-6. 4th, receiving and retaining in their possession property valued

at rupees 65-14-3, obtained by the above plundering, knowing it to have been such. 1854.

It appears, from the statement of the prosecutor and the evidence of the witnesses, that about 5 o'clock of the 26th of January, corresponding with the 14th of Magh, the plaintiff's house was attacked by a body of men in number about thirty or thirty-five, all armed, variously, with spears, clubs, &c., when they entered the eastern house of the courtyard and proceeded to break open chests and boxes, taking from thence property with cash to the amount of rupees 119-4-6. Having effected this part of their object, they seized hold of the prosecutor and carried him off in a boat to the Mohunpore cutcherry of Kishen Mohun Mookerjeeah, who holds a proprietary right in 3 annas 15 gundahs, in pergunnah Moohubutpore, and who had for a considerable period past cherished a deep enmity against the prosecutor. Of the whole body of men, the greater part went with the prosecutor in the boat, the rest proceeded in a southerly direction towards Mohunpore. At the time of the band leaving, a man of the name of Luraee Khelassee followed up the boat, running along the bank, giving the alarm and crying for assistance as he went on. The prisoners landed at the village of Mohunpore, where putting the prosecutor ashore they took him into the zemindar's cutcherry where they kept him for about an hour and a quarter, when they again put him on board the boat and proceeded towards mouzah Tarpasseh. The man Luraee Khelassee, who had, in following them up, reached *Chur Behaudurpore*, there gave the alarm, when several inhabitants of the village, to the number of 150 or 200 men, including the village chowkeedars Shitab, witness No. 42, and Sitto witness No. 43, some of these men hastily entering boats, and others running along by land, succeeded in effectually cutting off the prisoners' retreat by the time they had reached *Chur Behaudurpore*, where they completely surrounded them. In despair of getting further on, the prisoners in the boat, to the number of 23, jumped on shore and hid themselves in the *nul* jungle which grows on the *chur*. The chowkeedar and the village people, who had turned out so readily, searched the jungle in all directions and succeeded in capturing the men, one after another, in their places of concealment. The villagers and chowkeedars then took the whole body of prisoners as well as the prosecutor and part of his plundered property and proceeded to mouza Nowabazaar. The darogah of Daoodkandee, when he received the intelligence of the occurrence, repaired immediately to Nowabazaar, where he received over from the captors two boats and the whole body of the prisoners taken on the *chur*, as also the arms, (spears, clubs, &c.) which were also found on board the boat in which the plunderers had embarked. The darogah then proceeded on the same day to take a deposition from the prose-

November 28.

Case of
KALOO *alias*
KALACHAND
SURDAR and
others.

1854. cutor, and a statement of the property plundered from his house.
 November 28. Three of the band, viz., Kaloo *alias* Kalachand, (prisoner No. 2,) Abbas *alias* Ashruff (prisoner No. 3,) and Solimuddin *alias* Solim (prisoner No. 4,) confessed fully their participation in the deed of violence. Kalachand (prisoner No. 2,) also produced a small bundle from his person in which was found the gold and silver ornaments plundered from the prosecutor. These three men also confessed their guilt before the magistrate. The owner of the boat which the prisoners had used, Kannye Manjhee, (witness No. 44,) and Shibram Chung (witness No. 45,) and Muthoora Mohun Chung (witness No. 46,) boatmen, deposed distinctly and clearly to the fact that Bungshee Raee *naib* of the zemindar, Kishen Nayth Mookerjee, and Ishan Baroree had hired the boat for the declared purpose of proceeding first to Mohunpore and thence to Dacca. From the place where the boat was hired, 14 or 15 men proceeded in it to Mohunpore. When they started they are stated to have had no arms with them, but on reaching Mohunpore, where the zemindar's cutcherry is, five or six of the men got out and brought from the cutcherry house a number of *lattees* and spears, &c., which they deposited on board the boat. On the manjhee inquiring for what purpose they had brought these arms, they told him not to trouble himself about them, but to mind his own business. Ishan Baroree and Bungshee then came to him and told him not to trouble himself, but to take the boat on at once to a spot called Barehonbya in Mohunpore, and to *lugao* the boat under the large tree on the bank. These two men then got on shore themselves and with the other men proceeded by land, leaving two men of their party in charge of the boat. They returned about sun-rise to the boat, bringing the prosecutor and a quantity of property with them. They then told them to loose the boat. Ishan and Bungshee, the zemindar's gomashta and naib, went at once to the cutcherry, after which the boat proceeded to Mohunpore *ghat*. After this they proceeded with the prosecutor and his property to *chur* Behaudurpore, where they were captured by the villagers in the manner related above. The property which was taken in the boat and the ornaments found on the persons were all clearly proved, by the evidence of various witnesses, to belong to the prosecutor. Seven men, inhabitants of the prosecutor's village, also identified the prisoners as those engaged in the attack and plunder, and also swore to the property being the prosecutor's.

The prisoners generally admitted before the magistrate to having carried off the prosecutor, who, they stated, was in arrear of rent to Kishen Nath Mookerjee, zemindar. The prisoners plead not guilty at the sessions, and bring forward some witnesses in their favor, but these men, without exception being dependants of Kishen Nath, zemindar, who no doubt had insti-

gated the whole matter, their evidence could not in itself be considered of any value, far less to weigh against the overwhelming testimony against the prisoners. 1854.

November 28.

Every part requiring to be proved in this case has been fully and clearly substantiated. I understand this man Kishen Nath Mookerjee is a well known disturber of the peace of the country, where he resides; and it is deeply to be lamented that such a man should escape the punishment he deserves, I consider that it would be a great blessing to the whole country were a stringent law enacted to make zemindars or their local agents, or both, severely punishable on the occurrence of outrages in their estates by armed bodies of men; more particularly when, as in this case, there can exist no doubt whatever of their being the instigators. In a case of this kind, the guilt of the instigator or his agents is fifty-fold greater than that of the poor, ignorant instruments whom they employ. The employer enjoys complete impunity, and can safely laugh at the laws which he violates, as he takes very good care never to appear personally in the affair. The third count of the charge, viz., riotous assault and plunder is clearly proved by the clearest and fullest evidence. The prisoners were sentenced respectively to three years' imprisonment and one hundred rupees fine; the fine to be paid in the space of fifteen days, or in default of payment, the prisoners to labor on the roads, or until the payment of the same.

Case of
KALOO alias
KALACHAND
SUNDAR and
others.

It is deeply to be regretted that the two principals, the naib and gomashta, have succeeded in absconding. Warrants are out for their apprehension, and I trust that their capture may be speedily effected.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.)

Mr. Dick.—The eye-witnesses, lookers-on, to the attack on the house of prosecutor and to the plundering, are not worthy of the least credit, as pointed out by the pleader, Mudoosoodun Dutt, for prisoners. They assert that they saw the attack (most of them) from a ruin; and yet each says no one was near him: and they recognized all the twenty-three prisoners and others; yet of these, the major part, they did not know before and could not name them; and were so far off, that though the dacoits, or plunderers, had placed a guard, none of these lookers-on were molested. I reject therefore the evidence of these men. There is however sufficient evidence of the prosecutor, the house servants and others to prove that the prosecutor was forcibly carried off, and was being taken to the master of the offenders, in a boat, when they were stopped and captured by the villagers on the river-side, on a hue and cry being raised. The statements of the prisoners in their defence, go far to corroborate the above view of the case.

1854. I see no reason therefore to interfere with the sentence passed on the prisoners.

November 28. The sessions judge, in his abstract of the case, has recorded that the employer of the prisoners, Kishen Nath, is a well known disturber of the peace. This should have been substantiated by a reference to some proved misdeeds of his. Again, the prisoners accused his (Kishen Nath's) co-sharers equally of malpractices, and referred to charges proved against them; yet with regard to the truth or otherwise of these counter statements, the sessions judge has not taken any notice.

Case of
KALOO *alias*
KALACHAND
SUNDAR and
others.

Mr. Colvin.—I concur with Mr. Dick in rejecting the appeal, as there is sufficient good and trustworthy evidence to sustain the conviction of the prisoners, which evidence is corroborated also by the tenor of their answers and by the confessions of three of them before the magistrate.

PRESENT :

A. DICK AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT,

versus

MEAJAN.

Mymensingh.

1854. CRIME CHARGED.—Perjury in having on the 26th May, 1854,

November 28. intentionally and deliberately deposed under a solemn declaration made instead of an oath, before the assistant magistrate of Mymensingh, in the case of Sofoo, that they saw Khoodeeah and others coming to Sofoo's house, arrest and beat him, and take away his cow, and again on the 9th June, 1854, intentionally and deliberately deposed under a solemn declaration made instead of an oath before the same officer that Khoodeeah did not beat Sofoo and that he was at the time of occurrence at Dhooladear Chur, such statements being contradictory to each other on a point material to the issue of the case.

Case of
MEAJAN.

Perjury must
be charged
while the case,
in which it
is alleged, is
pending.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 19th September, 1854.

Remarks by the sessions judge.—The prisoner, who was named as a witness by Sofoo in a case before the assistant magistrate, deposed that he saw Khoodeeah and others beat one Sofoo, but when he was again cited as a witness for the defence, he stated that Khoodeeah did not beat Sofoo, that at the time of occurrence Khoodeeah was absent at Dhooladear Chur. The assistant

magistrate, having discovered the discrepancy in his evidence, called for the prisoner, when he urged that Sofoo forced him to smoke *ganjah* at the time of his giving evidence and that he does not recollect what he said. In this court he urged the same plea and named witnesses to his defence, but their evidence was insufficient to prove his defence. The jury convicted him of perjury, in which I concurred.

1854.

November 28.

Case of
MEAJAN.

Sentence passed by the lower court.—To be imprisoned with labor and irons for the period of (3) three years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The Court notice that although the assistant magistrate has attested the depositions, at the end of them, he has not signed his name to the certificate above the words, “assistant magistrate,” at the beginning. This should not have been omitted, and the omission should have been noticed by the sessions judge.

The Court find that the case, in which the alleged perjury took place, was *decided before* the discovery of the crime. They hold therefore that the assistant magistrate was not competent to inquire into it. Perjury must be material to the issue of a case pending, otherwise no issue is left for disposal. When once final orders have been passed in a case between the parties to it, the proceedings cannot be referred to, to inquire into a charge of perjury said to have been committed, while it was pending. The Court accordingly acquit the prisoner and direct his release.

Additional note by Mr. Dick.—I would observe in confirmation of the correctness of the above view, that the crime of perjury is defined in Clause 1, Section 4, Regulation II. of 1807, with the *present* participle ‘giving;’ and again in Section 26, Regulation XII. of 1817. In Section 13, Regulation XVII. of 1817, however, when the punishment for it is declared, the *past* participle is used, ‘having given,’ because the trial for it is then before a court of circuit or the Nizamut Adawlut, and the commitment made.

PRESENT :

A. DICK, H. T. RAIKES AND B. J. COLVIN, Esqs., *Judges.*

DHUNEE GOWALAH AND GOVERNMENT

versus

KISNAH KAHAR.

Hazareebagh.

1854.

CRIME CHARGED.—Wilful murder of Musst. Jhulleah Gowalin
November 28. wife of the prosecutor.

Committing Officer.—Moonshee Dubeeroodeen Ahamed, deputy magistrate of Burhee.

Case of KISHNAH KAHAR. Tried before Major J. Hannington, deputy commissioner of Chota Nagpore, on the 15th September, 1854.

The prisoner was sentenced capitally for murdering the deceased on the ground of witchcraft. *Remarks by the deputy commissioner.*—The prosecutor states that on returning from his field one evening, he heard lamentations in the house of the prisoner, Kishnah, and going there, learned that the prisoner's son, who had been sick, was dead. The prisoner then went towards the prosecutor's house, followed by the prosecutor and Ruttee and Khemun; prisoner went into the house and dragged out the prosecutor's wife, on whom he inflicted several wounds with an axe, nearly cutting off her head, so that she died instantly. The prisoner then resisted all attempts to take him into custody, but help coming, he was taken up during the night. He killed the deceased as a witch, but the whole village knows she was not a witch. She was about thirty-five years old. The prisoner did not mention her while in his house, but after the fact he said that she was a witch and had eaten his child. She had never been so accused before.

The prisoner pleads *not guilty*.

No. 1, witness, Khemun Gorait, states that he and Ruttee and the prosecutor went to the prisoner's house and found him weeping. Prisoner then took an axe and ran towards the prosecutor's house, and before the witness and others could interfere, he killed the deceased in their presence. He said, she was a witch and had eaten his son. When leaving his own house, the prisoner said he was going to kill the witch.

No. 2, witness, Ruttee Chowkeedar, went to the prisoner's house and together with prosecutor and Khemun advised him to bury the body of his son. Prisoner then began to examine his gun and powder, and finally taking an axe, ran towards the prosecutor's house where he killed the deceased. Witness saw the blows inflicted by the prisoner. The deceased died instantly, prisoner said she was a witch. Before leaving his own house, he said he was going to kill the witch, but he did not name any one.

No. 3, witness, Chootur Koomhar, saw the prisoner kill the deceased.

1854.

No. 4, Muzar Emam, No. 5, Deonath Singh, the witnesses to the apprehension of the prisoner, prove that he made voluntary confession of having murdered the deceased.

November 28.

Case of
KISHNAH
KABAR.

No. 6, Bhodah Gowalah, No. 7, Bonowdee Telee, No. 8, Tolo Modee, No. 9, Kirpa Gowalah.—The record of the inquest is duly proved by the witnesses thereto.

Before the police officer and before the deputy magistrate the prisoner made full and free confession of having murdered the deceased, because he believed that she was a witch, and had destroyed his son. These confessions are proved

* No. 10, Toolsee Telee, No. 11, Chundun Modee, No. 12, Rajabram mooktear, No. 13, Rewathlall mooktear.

by the witnesses named in the margin.*

The substance of the first confession is as follows :—

Yesterday afternoon my son died. When dying he said to me, "I am sick, my whole body is in pain, and just now Dhunnee's wife has laid hold of me, and having looked at me is gone. I refused to give her some mangoes, and therefore she is eating me." I comforted him and said, I would not allow her to injure him, but after a little, he became insensible and died. While I wept, Khemun and Ruttee and Dhunnee and Kishnah came and spoke kindly to me. I said to Dhunnee, Your wife has destroyed my son, he has told me so. I will kill her; so I took my axe and went out saying to Dhunnee, I will kill your wife. He made no reply. I went to his house and called his wife; she came, I said, Why have you bewitched my son? she gave no answer to my repeated question. So I cut her down with the axe, and when she fell I struck her two blows on the neck and one on the hand, I then returned to my house. She never spoke, I came home and said to the watchmen I have done murder, take me up. They said, You have an axe in your hands, how shall we take you up? I swore that I would hurt no one more, whom I have killed, I have killed. They then said to me, You are not a man who will run away, so we let you go free. Khemun Gorait tried to prevent me, he laid hold of me and said, Don't commit murder; but I would not heed him, I said My son is dead, why should I live? I too will cross on his shoulders. He and Jhullea (deceased) and I will all go together. Therefore I killed her with the axe. The prosecutor only said, whose murder? whose neck? This is true every word.

No. 14, Kishnah Dhobee. This witness speaks to the same facts as Nos. 1 to 3, but he adds the important circumstance that before going to the prosecutor's house, the prisoner said that the prosecutor's wife was a witch.

The prisoner in his defence says that the prosecutor's wife had formerly bewitched one child, and now had bewitched ano-

1854. ther, that he told the prosecutor he would kill her, on which prosecutor said, "whose murder, his neck, do as you like," whereupon
November 28. prisoner took up an axe, and now he has no further memory of what happened.

Case of
KISNAH
KANAR.

For the defence.

No. 15, Janoo Burahil. Witness was passing the prisoner's house, when prisoner said to him, "Here, take back your gun, I have committed murder." He said no more and seemed to be much agitated. Witness afterwards heard that the prosecutor's wife had been murdered by the prisoner, and witness endeavoured to take up the prisoner who had an axe in his hand and would not surrender, but said that he would not run away.

No. 16, Chundoo Gorait, gives the prisoner a good character.

The jury, whose names are entered below,* find the prisoner guilty as charged.

In this verdict I concur. That the prisoner under a strong impression that the deceased had bewitched his child murdered her therefore, does not admit of doubt. The evidence leaves on my mind this further impression that the witnesses to the fact might have prevented the murder, if they would, and that they were wilfully, not apathetically, passive in the matter. I see no reason to question the statement that the dying child charged the deceased with having bewitched him, and the impression made by such a dying declaration on the mind of his ignorant parent, must have been extreme. Thus far, there is a kind of justification, which yet cannot be admitted, and it is plainly my duty to recommend that sentence of death be passed on the prisoner. But if there be room for mercy, let it be shown in this case. I am strongly of opinion that executions have to the people of this country no terror, physical or moral, and that the highest of secondary punishments, life imprisonment in transportation, has more exemplary force, than any other that can be proposed. That murder should carry with it the penalty of death is right, but it by no means follows that this penalty should be always enforced. Whatever punishment most deters from crime, that is the most eligible.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and B. J. Colvin.)

Mr. A. Dick.—The prisoner in this case has, without doubt, incurred the penalty of capital punishment, but not in every case in which it is incurred, is its infliction expedient. In awarding that sentence, the judge should consider whether it be the one felt by the culprit as the most terrible. 2ndly, whether it be the one most effectual as a warning to others. 3rdly, whether the

* Lalla Deochund Lall, mooktear.
Lalla Hira Lall, mooktear.

future safety of the community calls for its infliction. It is the last penalty of the law, and commonly held to be the severest, the most terrible, and most deterring. It should therefore be reserved for the most heinous of crimes, murder *premeditated* and *malicious*. It can be little dreaded by one who holds life in no estimation; and have little effect as an example among those who take it for a petty sum, or destroy it on the most trifling provocation. Life, moreover, is of small value to those who have little means of enjoyment, and suffer many deprivations, and much distress. To such, and those who love indolence and detest labour, perpetual imprisonment, continuous labor, and transportation to an unknown land, must be infinitely more miserable and frightful and more effectual in deterring. Consequently, when the culprit is one of those, who holds life at a cheap rate, and to whom individually it is almost valueless, and labor is irksome, and whose ignorance renders lasting removal to an unknown land, frightfully terrible, transportation for life must be more dreaded as a penalty, and effective as a warning, than capital punishment. In such cases then, where the crime of murder is unattended with premeditation or aggravated by malice. I am clearly of opinion, that the most appropriate and just sentence is transportation for life. The prisoner before us, on the instant of his child's death, in the presence of the husband of the deceased woman and of others, snatched up the weapon, and ran to the woman's house, a few paces off, and cut her down in full belief that she had killed his child by witchery, and he is described to have been a mild, inoffensive, good character by his neighbours, and bears a character free from cruelty and blood-thirstiness. I would sentence the prisoner as recommended by the deputy commissioner.

Mr. B. J. Colvin.—The facts being proved, I cannot concur in remitting the capital sentence in this case. If the reasoning of the deputy commissioner be assented to, there should be no capital punishment in the tract of country to which he refers,

but neither does the law applicable to it, nor the practice* of this Court do away with the penalty of death therein. The prisoner, in my opinion, did premeditatedly and maliciously kill the deceased. The premeditation was of short duration, but it sufficed to let him form his design and take the necessary steps to effect his purpose, and he went deliberately from his own house to that of the deceased, armed with a deadly weapon, and gratified his malicious feelings, ill-founded as they were, by taking away her life. The delusion of mind under which he labored cannot be allowed to operate in favor of the prisoner. In all the ordinary affairs of life, he was apparently of a sound intellect, and had

* See the case of Government versus Choorooteah and others, decided 31st December, 1853.

1854.

November 28.

Case of
KISNAH
KAHAR.

1854. quite sense to know that he was committing an act, which would be visited with punishment.
- November 28. *Case of KISNAH KAHAR.* *Mr. H. T. Raike*—The evidence on record proves that the prisoner was excited by distress of mind at the death of his son, which he attributed to witchcraft practised on him by the deceased Jhulleah, and announced his determination to take vengeance on the woman for the loss of his child. In the presence of those who had come to his house, he first seized his gun and examined his powder, but rejecting that weapon, he took up his axe and proceeded straight to the house of the prosecutor, dragged out the deceased and taxing her fiercely with having bewitched his son, to which he got no answer, he cut her down with his axe, and killed her on the spot. This to my mind was wilful and deliberate murder, and as long as the law prescribes the penalty of death for the offence, this Court is bound to inflict it, when no circumstances of mitigation present themselves. In the present case I see none, and therefore concur with Mr. Colvin in sentencing the prisoner to suffer death.

PRESENT :

A. DICK AND B. J. COLVIN, Esqs., *Judges*.

ZURIFF KOLOO AND GOVERNMENT

versus

Rajshahye. SYRUT SHEIKH (No. 9.) SULLIM SIRDAR (No. 10.)
ANUND SHEIKH (No. 11.)

1854. CRIME CHARGED.—Wilful murder of Suroop Koloo, brother of the prosecutor, Zuriff Koloo.
- November 29. Committing Officer.—Mr. F. Beaufort, joint-magistrate of Pubna.
- Case of SYRUT SHEIKH and others.* Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 24th October, 1854.
- Remarks by the sessions judge.*—The *futwa* convicting one of the prisoners of murder, and another (No. 10) of aiding and abetting in the same, and as I dissent from the conviction of the second prisoner, the reference is unavoidable.
- The prisoner was convicted of aggravated culpable homicide, his intention to take the deceased's life being doubtful.
- The prosecutor, with the Government, (who was the deceased's brother) deposed to being called to go and see his brother, who had been killed, and found him lying with a wound on the groin on the left side, and on asking the deceased who had maltreated him, he answered the prisoners, Nos. 9 and 10, and two others not put on their trial. They then took him up, and carried him home on a *jhamp*, and when a *dundo* had elapsed, he died. The deceased did not mention where he had been wounded, or why.

He had an intrigue with Bugo Bewah, whose dwelling was one *beegah* and a quarter from the place where they took him (deceased) up.

1854.

November 29.

Case of
SYAUT
SHUKH
and others.

The prisoners pleaded *not guilty*.

Witness No. 1, Bugo Bewah, deposed that the deceased knocked at her door at night, and she was about opening it for him, when No. 9 with a bamboo *surkee*, wounded the deceased, who throwing up his hand ran away, No. 9 also went away, and on hearing deceased say he was killed she wanted to go to him, but was prevented by her rival's mother. That she had an intrigue with the deceased for five years previous, never had one with No. 11; when No. 9 struck the deceased he was alone. No. 10 was her uncle, and he never told her to break off her connection with the deceased; No. 9 had threatened the deceased, as he had flirted or joked with his wife, and the wound inflicted (by him) was not on her account (the witness and the wife of No. 9, are sisters.)

Witness No. 2 deposed that he was called by witness, No. 3, and went and found a man lying on the ground, who asked for some water. This was the deceased, who said he had been to the house of Bukaoollah, where the prisoners, Nos. 9 and 10, wounded him with a *surkee*, and that they were to tell his brother, which they did. This witness saw standing, one *null* from the place where the deceased was lying, two men, one of whom he recognized as No. 10.

Witness No. 3 confirms the above, and adds, he recognized two persons standing near, and one of them *resembled* No. 10.

Witness No. 14 deposed, that No. 9 came one night and said he had wounded the deceased with a *surkee*. (This witness is the prisoner's brother-in-law, and seems to have detained him till he was made over to the *darogah*.)

Witness No. 15.—The wife of the last witness confirmed her husband's statement, and also deposed that the wife of No. 9, was in the house of her father on the night that Suroop Koloo was killed.

Witness No. 8, Mr. W. J. Ellis, sub-assistant surgeon. From this evidence, in my opinion, it is fully proved that No. 9, and he *only* wounded the deceased, and the cause of his death was hamorrhage, or loss of blood from a wound on the left thigh, taking in its course one of the principal branches of the femoral artery. There was another slight wound between the 2nd and 3rd fingers of the right hand, but this was not the cause of his death.

In addition to this evidence, there are two confessions made by No. 9. In both he distinctly admits wounding the deceased with a *surkee*, and that No. 10 instigated him to it. In the foudary confession he says No. 10 told him to strike the deceased in the belly, but that he struck him in the thigh instead.

1854.

November 29.

Case of
SYAUT
SHAIKH
and others.

* Three witnesses to the mofussil confession, and two to the foudjary one, were examined, and deposed they were voluntary ; but I do not credit the entire statements made, the first confession was made with a view to throw the blame on another individual, who I do not think was at all likely to meddle in the matter, as his brother, the father of Bugo, and of the wife of No. 9, was alive. At any rate, the confessions can be only used against the prisoner, No. 9, who made them.

I would, therefore, on the evidence and the confessions made by No. 9, and taking into consideration the very suspicious circumstances under which the deceased was found, near the house occupied by the prisoner's sister and also his wife, and which (had he been apprehended instead of killed) would have subjected him to punishment for lurking at night with a malicious intent, (an offence, the Court have recently allowed the joint-magistrate of Pubna to include among the list of miscellaneous offences in part 1, of his monthly statements No. 2,) convict No. 9 of aggravated culpable homicide, and sentence him to fourteen years' imprisonment with labor and irons, as there is no evidence as to his intention to kill the deceased.

I dissent from the *futwa*, as regards No. 10. The law officer evidently convicts him on the confession made by No. 9. The only witness, who recognized him, merely saw him standing near the place where the deceased had fallen wounded, but this fact would not, or could not, make him an accomplice, or accessory to the murder. I therefore beg leave to suggest that the *futwa*, as regards No. 10, be superseded, and the prisoner acquitted.

No. 11, agreeably to the *futwa*, has been released, he was recognized by no one, and was not named by the deceased. No. 9, in his confessions, said he *wanted* to intrigue with his sister-in-law, but when questioned on the subject, she quite spurned the idea ; and his looks were certainly not those of a gay *Lothario*, or such as would win a woman's heart.

With this opinion, I beg to leave the case in the hands of the Court.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) We concur with the sessions judge in acquitting Sullim, No. 10, as the evidence is not conclusive against him, and giving the prisoner, No. 9, the benefit of the doubt, as to there having been any intention on his part to take the deceased's life, we convict and sentence him as proposed by the sessions judge.

PRESENT :

A. DICK AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT

versus

MOJOOMDEE.

Mymensingh.

1854.

CRIME CHARGED.—Wilful murder of Obhoya Ourut.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

November 29.

Case of
MOJOOMDEE.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 9th October, 1854.

Remarks by the sessions judge.—It would appear from the evidence taken on the trial that the prisoner, on the day of occurrence, returned from his fields at about one and half *puhur* of the day, and asked his wife, the deceased, if she had cooked the rice, when the deceased replied that she could not do so, as she was sick. The prisoner then became enraged and gave her a blow with his hand, when she fell down on the ground and died about

The Nizamut Adawlut on account of mitigating circumstances, reduced the sentence.

one and half *puhur* afterwards. Witnesses,* Nos. 1 and 2, servants of the prisoner, who also returned from the fields with him, de-

* Shonaulah.
Heeda.

posed that they were smoking tobacco at the distance of about three or four cubits from a house belonging to the inner apartment, and heard from thence the prisoner asking his wife, the deceased, if she had prepared the rice for him, and on her answering that she was unable to do so, as she was sick, the prisoner gave her a blow and went out to graze his cattle; that they, the witnesses, heard the sound of the blow, but did not see it given, as it was done inside the house; that the deceased then fell on the ground and when the prisoner's sister came home with water, which she went to fetch, the deceased asked her to give her some and drank it, when she began to vomit and fell senseless on the ground and died half a *puhur* afterwards; that the deceased was sick with fever for about six months and was in an emaciated state and that the prisoner was called by his nephew Bagooah, to see her, as she was vomiting, and the prisoner came home and had recourse to every measure to bring her to her senses, but all in vain.

The other witnesses, Nos. 3, 12, 14 and 15,† also stated that they heard from the prisoner that he gave his wife a blow, which caused her death as she was sick.

† Sheikh Naboo.
Sheikh Bukerdee.
Sheikh Luahker.
Sheikh Shajah.

The civil assistant surgeon deposed that the deceased's death was caused by a rupture of the spleen, and

1854. that the rupture must have been caused by a blow of the hand or feet in that region of the body and the blow might have been slight, as there was no bruise outside.

November 29. Case of The prisoner admitted both before the police and the magistrate having given his wife a blow. In this court, he urged that he gave only a slight blow and that the deceased died from illness, but he declined to examine any witnesses on this point.

MOJUMDEE. The jury, who aided me on the trial, gave in a verdict of culpable homicide against the prisoner, in which I concurred. As the practice of beating wives in this district for the most trivial offence is of frequent occurrence, and death often ensues in consequence, it is necessary to punish severely. Although the immediate cause of death in this case was doubtless from the rupture of the spleen, produced by a blow inflicted by the prisoner, still as death ensued, I think the punishment awarded is not too severe.

Sentence passed by the lower court.—Four years' imprisonment and to pay a fine of 30 rupees on or before the 9th November, 1854, and in default of payment to labor until the fine be paid or the sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The facts are proved, but we think the sentence passed by the sessions judge to be too severe. The prisoner says he gave his wife a slap on the face only, and it is likely that this is true, as the sound of it was heard outside the apartment, which would not have been the case had the blow been dealt in the region of the spleen, where the body is covered; the rupture of the spleen probably followed from a fall in consequence of the blow, and its occurring so easily is quite accounted for by the spleen's diseased state. The prisoner too is described as not a harsh man. With reference to the above circumstances the sentence is reduced to one year's imprisonment with a fine of 15 rupees payable in fifteen days.

PRESENT :

A. DICK AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT

versus

RADHA ROY.

Sarun.

1854.

CRIME CHARGED.—Perjury, in having on the 15th July, 1854, corresponding with 5th Sawun, 1261 F. S., intentionally and deliberately deposed, under the solemn declaration of Act V. of 1840, taken instead of an oath, before the assistant with the powers of a joint-magistrate of Sewan, that Enayat Ally struck with a spear Pershad Ahir in the direction of his ribs and wounded him, so that he fell; and afterwards in having, on the 18th August, 1854, corresponding with 10th Bhadon, 1261 F. S., before the said court again intentionally and deliberately deposed under the solemn declaration of Act V. of 1840, that he had never made the above deposition, such statements being false, and contradictory of each other on a point material to the issue of the case.

November 29.
Case of
RADHA ROY.

The prisoner
was convicted
of perjury in
denying that
he had made
a previous de-
position on
oath.

CRIME ESTABLISHED.—The same as crime charged.

Committing Officer.—Mr. W. F. McDonell, joint-magistrate for the deputy magistrate of Sewan with full powers of a magistrate.

Tried before Mr. H. Atherton, officiating sessions judge of Sarun, on the 20th September, 1854.

Remarks by the officiating sessions judge.—This prisoner, No. 2, was plaintiff in the case trial No. 2, for September described as follows.

“The deceased, Shcopershad Ahir, with Radha Roy, plaintiff, employed by Shewpertabnarayn, were guarding the orchard of jack trees for their master at mouzah Nowadah, when the defendants, on the part of Enayat Ally ticcadar, attended by a large party of men, and it is said Enayat Ally himself came for the purpose of gathering and carrying off the fruit by force. The deceased was struck, it is said, by Enayat Ally on the side with a spear and on the belly by defendant, No. 3, with a *lattee* and from the injuries received, he expired on the 3d day following the assault, which took place on the 3d July last. The most serious injury was, it appears from the evidence of the civil surgeon, that inflicted by Sohawun, defendant No. 3, and there can be no doubt that that occasioned death. Defendants, Nos. 4, 5, 6 and 7, are also proved to have been engaged in the outrage, Bhugut and Gowree taking a more active part than Shewsum Singh and Rose Khan. The defendants all plead an *alibi*, but do not in my opinion establish it. In concurrence with the opinion

1854. of the jury, I find all the prisoners guilty of the crime charged
 against them, viz., riot attended with culpable homicide of
 November 29. Sheopershad Ahir, and sentence them as noted above. The joint-
 Case of : magistrate did not consider the proof sufficient to warrant the
 RADHA ROY. committal of Enayat Ally."

On the 15th July last, when examined under Act V. of 1840, he declared distinctly that Enayat Ally had struck Sheopershad Ahir with his spear, and again on the 18th August denied having made any such statement when similarly examined. From the proceedings in the case, it appears to me clear that the prisoner, when plaintiff, was bought off, and that he has deliberately and fraudulently committed perjury with the view of defeating the end of justice. He states in defence that he is a poor man and has committed a fault, and such is the opinion of the jury as well as my own. The crime of perjury being established, I sentence him as noted below.

Sentence passed by the lower court.—To be imprisoned without irons with labor for (3) three years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The deposition of the 18th August, is not a contradiction of that of the 15th July, but a denial of having made it. The prisoner should not therefore have been charged with making contradictory statements on the two dates, but with perjury in swearing that he did not make the statement, which he did on the 15th July.

This charge being embraced in the words he had never made the above deposition, such statement being false, we convict him of perjury in denying on the 18th August that he had given the evidence which he did on the 15th July; appeal rejected and sentence affirmed.

PRESENT :

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ.,

GOVERNMENT

versus

NIRGHIN TEWARRY,

Tirhoot.

1854.

CRIME CHARGED.—Being an accomplice in the theft of 2 maunds, 32½ *seers* of opium, valued at 393 rupees 12 annas.

CRIME ESTABLISHED.—Being an accomplice in the theft of 2 maunds, 32½ *seers* of opium, valued at 393 rupees 12 annas.

Committing Officer.—Mr. F. A. Glover, joint-magistrate of Chumparun.

Tried before Hon'ble R. Forbes, sessions judge of Tirhoot, on the 11th August, 1854.

Remarks by the sessions judge.—In this case Mhunggoo Singh, zilladar, witness No. 6, was proceeding from Mootecharee to Poochurya ghaut on the river Gunduck *en route* to Patna, in charge of 133 jars of opium carried by coolies and having arrived at night at a place called Ghoosiar, halted there till the morning. The witnesses and coolies kept watch till midnight, when however they fell asleep from fatigue, and about 2 o'clock in the morning, one of the coolies having got up, observed that two of the jars of opium were missing, which he concluded had been stolen. The zilladar early next morning gave notice at the thannah, and the darogah was endeavoring to trace the opium and thief or thieves, when two persons of the Ahur caste told him that the prisoner had confessed to them that himself and four others had together stolen the opium, and on his being accordingly taken up, he voluntarily confessed at the thannah before subscribing and attesting witnesses (Nos. 1 and 2,) that he and four others having gone to mouzah Ghoosiar, he (prisoner) staid at a distance while the other four went and stole and brought away two jars of opium, which being divided among them all, he (prisoner) received for his share 20 rupees worth, which he sold to one Dhujjo Rai.

In the foudjary court the prisoner made a similar confession, also attested by subscribing witnesses (Nos. 4 and 5) ; but in this court, pleading *not guilty*, he urged in his defence, that his confession had been extorted by the thannadar, but as he only called witnesses to speak to his previous good character, and it was on record that the prisoner had before been in prison for theft and other offences, I agreed with the law officer, who in his *futwa (tazcer)* convicts the prisoner of the crime charged, and the sentence mentioned below was passed by me.

Sentence passed by the lower court.—To be imprisoned with labor and irons for the period of (5) live years.

November 30.

Case of
NIRGHIN
TEWARRY.

Appeal re-
jected, the
charge being
proved against
the prisoner.

1854. *Remarks by the Nizamut Adawlut.*—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) We find that the facts detailed by the sessions judge are established by the record. We accordingly reject the appeal.

November 30. Case of NIRGHIN TEWARRY.

PRESIDENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, Esq., *Judges.*

GOVERNMENT AND MUSST. POTEE CHOONARNEE

24-Pergunnahs.

versus

RAJO TANTEE.

1854. CRIME CHARGED.—1st count, dacoity attended with beating in the house of the prosecutrix and plundering therefrom property valued at Rs. 23-6-3; 2nd count, having in his possession property, a silver chain of value 1 rupee, acquired by the said dacoity, and knowing it to have been so obtained.

November 30. Case of RAJOO TANTEE.

CRIME ESTABLISHED.—Dacoity with beating.

Committing Officer.—Baboo Grish Chunder Ghose, deputy magistrate of Howrah.

The prisoner's appeal was rejected.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 20th June, 1854.

Remarks by the officiating additional sessions judge.—This is a very clear case of dacoity. Some ten persons entered the premises, menaced and slightly assaulted the women of the house and breaking open a box carried off its contents. The prisoner was among those recognised at the time of the dacoity. He was standing still with a *mussal* in his hand at the time of his recognition. When arrested by the police, he at once admitted his complicity in the dacoity and produced from his person a silver waist chain, which he acknowledged to be a part of the plundered property. He repeated his confession before the magistrate. He denies the charge before this court, pleading an *alibi* and claiming the silver chain as his own property. He made no attempt to prove the former plea, but cited one witness to substantiate the second, whose testimony is manifestly a tutored tale. It is very clear that this is the prisoner's first offence, and hence the levity of the sentence.

Sentence passed by the lower court.—To be imprisoned with labor and irons in banishment for (10) ten years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) The prisoner was recognized and named on the spot, and confessed before the police and the magistrate; he also produced from his person a silver chain, which he said was given to him, and which was part of the plundered property. We see no reason therefore to interfere with the sentence or the prisoner's appeal.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, Esq., *Judges.*

NITTAE GHOSE AND GOVERNMENT

versus

ISHUR GHOSE (No. 12,) AND FURHATULLA CHOW-KEEDAR (No. 13.)

Rajshahye.

CRIME CHARGED.—No. 12, wilful murder of Beelukhunna Aurut the wife of Nittae Ghose prosecutor, attended with the theft of her ornaments. No. 13, 1st Count, being an accessory to the abovementioned murder before and after the fact; 2nd Count, privy to the above murder.

1854.

November 30.

Case of
ISHUR GHOSE
and another.

Committing Officer.—Mr. F. Beaufort, joint-magistrate of Pubna.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 27th October, 1854.

One prisoner was sentenced capital-ly for murder, of accessory-ship to which the other prisoner was acquitted.

Remarks by the sessions judge.—The *futwa* finding the charges against the prisoners proved, the reference is unavoidable as the sentence rests with the Superior Court.

The case is an aggravated one, and the proof of complicity is supplied by the confessions of the prisoners, which though denied in this court have been fully proved to have been voluntary.

The prosecutor, with the Government, was the husband of the woman murdered, and deposed that on the night of the 3rd August, he heard the prisoner No. 13, making a noise near his house and on asking him what he was doing, he replied his wife was behind the house, he then went away, and his wife went to the cooking-shed. After this, requiring a cloth, he asked his wife to give it him, but receiving no answer, he went to the cooking-shed but found she had gone. No. 13 told him to look for her at the *noiagollah*, but after an ineffectual search he returned home, when he found two men sitting at his house, who said they had discovered a body in the river at the place called Kolegam. He then went to the place with his mother, and found the body of his wife, but the turtles had eaten all the face and upper part of the corpse, and there were no ornaments on her person, but he fully recognised it as his wife's and went and complained at the zemindar's cutcherry, when No. 12 confessed he had killed his wife, and No. 13 that he had inveigled her out of his (witness') house. The witness also identified some ornaments on the table, and a small copper spoon or scoop (used to take *sindoor* out of box) as his wife's property; and added, they had been produced by No. 12, from some long grass, all were in a small bag.

The prisoners pleaded *not guilty*.

1854.

November 30.

Case of
ISHUK GHOSE
and another.

Witness No. 1, the prosecutor's mother, deposed to the sudden disappearance of her daughter-in-law on the night of the occurrence, and to the discovery of her body afterwards in the river, which she assisted to take out, and recognised as that of her son's wife. She also identified the ornaments and other things found in the *pawn bag* produced by No. 12, who had, before made improper advances to the deceased, when she told him to desist. This witness gave her evidence in a very flurried manner, and I cannot help thinking she was aware of the intrigue going on between her daughter-in-law and the prisoner.

Witnesses Nos. 18 and 19 deposed to seeing No. 13 behind the prosecutor's house peeping in; and No. 12 at the house of Bawool Paramanik which was close by.

Witnesses Nos. 21 and 22.—These witnesses were at the house of Gungaram Ghose when the prisoner, late at night, came in and laid down in the *verandah*.

Witnesses Nos. 15 and 16, deposed to finding the body of the deceased, in the river; turtles had eaten off the flesh from the face and upper part of the corpse. The prosecutor when he went, recognised it as that of his wife.

Witnesses Nos. 9, 10 and 13 deposed to being present, when No. 12 produced some ornaments and other things contained in a bag, from some grass behind his cow-shed; and the two last witnesses identified them as the deceased's.

Witness No. 14 also identified the things produced behind the old *gowail*, as the property of the deceased.

Witness No. 17 saw the deceased speaking to No. 13.

Witness No. 20 saw her talking and joking with No. 12, on the day she was missed.

Witnesses Nos. 2, 3, 4 and 5 attest the *sooruthal*, all recognised the body as that of the prosecutor's wife. But the flesh from the face and upper part of the corpse had been eaten by turtles.

The above is a brief *epitome* of the evidence. All hearsay and irrelevant matter being omitted, the *hiatus* is supplied by the confessions.

The first read was that of No. 13, in the *mofussil* made before the *darogah*. In this he admitted acting as a go-between for the deceased and prisoner No. 12, and told the latter, that she had gone from her house to meet him.

The *foujdary* confession is much to the same purport, but what relates to his communicating to No. 12, that the deceased had left her own house to join him, was elicited by cross-examination.

The prisoner denied both confessions; but they are fully proved, by three very respectable witnesses* to have been made without any threat or encouragement being held out to him; and being

* *Witnesses Nos. 7, 8 and 9.*

a chowkeedar he must have been fully aware that the confessions would be used against him.

1854.

The confessions confirm the evidence given by the witnesses numbered Nos. 1, 18, 19, 21 and 22, in almost every particular, and there can be no doubt both were genuine confessions, made with a view to exculpate himself from the more grave charge of murder.

November 30.

Case of
ISHUR GHOSH
and another.

No. 12, in the mofussil, confessed to the abduction of the prosecutor's wife on the night of the occurrence. That after going some way they sat on a stranded boat and conversed. The deceased then refused to go any further with him, the reasons given by the prisoner for her refusal, are, first, that if he accompanied her to her father's house they (the inmates) would not receive her; *second*, if she became a *boistumee*, and went with him, he would desert her directly his wife was old enough to cohabit with him, and *lastly*, if she returned home, her husband would cut off her hair and nose. "He was to go by himself, as for her, it was better she would die." That not being able to persuade her to go on, and on her saying he might strike or kill (*mar*) her he got angry, seized her by the hand, and dragging her to the river, forced her into the water, in a place where the depth was up to the knees, and with his left hand held her hair, and with the right, on the back of her neck kept her head under water till she died (or drowned). He then lifted up her body, and finding she had ceased to breathe, he left the corpse in the water, and went home; taking with him her ornaments and the things she had given him. These he concealed behind his old cow-shed, in some grass, and then laid down and slept in the *verandah*.

The prisoner denied making this confession, but it was fully proved that he had done so, by the witnesses numbered in the

margin,* and who before attested the confession of No. 13, both having been made at the same time, but that by No. 12, was first taken down.

The foujdary confession is much to the same effect, but less in detail, and the following questions was put to the prisoner by the joint-magistrate.

Q. Did you hold her down in the water with the intention of killing her?

A. No, I did not want to kill her outright, I held her down merely by way of chastisement.

এবরত দেওয়ার মতলবে জলে ঠাসিয়া রাখিয়াছিলাম।

The witnesses examined to the confession of No. 13, also attested this, as voluntarily made by the prisoner before the joint-magistrate, and though I do not approve of confessions obtained by questioning, and doubt if the above question was a

1854. judicious one, the answer could never have been invented by the mohurrir, who took it down in the joint-magistrate's presence.

November 30. When called upon for his defence, No. 12 admitted he had an intrigue with the deceased, adding it was on this account the prosecutor accused him with the murder, and had him apprehended, and that he (the prosecutor) and Mokeem burkundaz made him produce the property from a place, *they pointed out to him*, and this his witnesses would prove.

Case of
ISHUR GHOSE
and another.

Witness Nos. 23, 24 and 25.—These witnesses were examined to the point and knew nothing; or were they aware of any previous enmity existing between the prosecutor and prisoner.

No. 13, when called upon for his defence, merely denied all knowledge of the murder, or of the woman being inveigled away from her home. He declined examining any witnesses.

On the usual question being put to the law officer, if wilful murder is proved against No. 12, he replied it was not according to the *shurra*.

He then gave in his *futwa* which convicts No. 12 of wilful murder, but declares *kissas* barred, as the prisoner denied the confessions. *Acobut* was however incurred, both by him and No. 13, who was guilty of privity to the murder.

In my opinion, independent of the confessions, it is fully brought home to the prisoners, that they were seen near, or loitering about the prosecutor's house, the night his wife was missing, and that No. 13, being the chowkeedar of the village and on his watch, *must* have been aware that the deceased left the village in company with No. 12, his telling the prosecutor after, to search for her at the *naia gollahs* (or new *gollahs*) affords strong presumption that he knew she was to be taken there by No. 12, to the house of some prostitute; and the presumption is much stronger, that the unfortunate girl, on discovering what was to be done with her, refused to go any further with the prisoner No. 12, and who, because she refused, threw her down in the water, and held her head down till she ceased to move or breathe. In fact committed a cool and deliberate murder on an unfortunate girl that he had seduced from her home, because she would not, to please him, become as abandoned as the females he was in the habit of associating with. The only thing in his favor is the answer to the question put to him by the joint-magistrate already cited. But what possible reliance can be placed on the prisoner's assertion that he only wanted to *chastise*, not kill his victim, after his mofussil confessions? In which he states, he lifted her body out of the water, and found that she no longer breathed. The act of lifting it out being done to satisfy *himself* that life was extinct.

Though prisoners have denied their confessions, law officers, in their *futwas*, have held in many cases of murder, that *kissas* was incurred, and this, where there was much less evidence; and

1854

November 30.

Case of
ISHUR GHOSH
and another.

I cannot tell why the law officer of this court holds it not incurred in this case. It calls for exemplary punishment, and under the *futuwa*, the prisoner may, and should, I think, be sentenced to imprisonment in transportation for life, with labor and irons.

The other prisoner, a chowkeedar of the village, and who acted as his go-between, or procurer, I consider may, on the evidence be convicted of accessaryship before the fact, and again, for example and because he was a public officer at the time, I would sentence him to seven years' imprisonment with labor and irons. Had he admitted his mofussil and foudary confessions, complicity in inveigling away the deceased from her husband's roof, was all that could be brought home to him. But as he denies in this court making these confessions, the law may presume he was cognizant, or aware of more than was revealed in these confessions, and be held answerable for the death of the girl who, as watchman, he made over to her seducer, and was afterwards deliberately murdered by him.

With this opinion, I leave the case of the prisoners in the hands of the Court; who, if deserving of mercy, or a more lenient sentence, will be sure to extend it to them.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. B. J. Colvin.) This, we consider a case of cruel murder, and has been fully proved against the prisoner, No. 12, Ishur Ghose, by his voluntary confessions in the mofussil and before the magistrate. They are given in great detail and these particulars are supported by evidence. The prisoner produced the ornaments, which he confessed he had taken off the corpse, when he left it in the water, from a heap of straw. These were recognized, (as was the corpse, though in some measure decomposed and partially eaten,) by certain bracelets of brass and shells, which were on it, when first found. The prisoner's confessions are verified by respectable witnesses, he pleaded *not guilty* in the sessions court and endeavored to establish that the property, which was produced by him from his house, was pointed out to him by prosecutor and Mokeem burkundaz. His witnesses however deny all knowledge of that transaction.

The sessions judge is of opinion that the prisoner committed a cool and deliberate murder. The only thing in his favor is the answer to the question put to him by the joint-magistrate, alluded to in the letter of reference.

We observe that in the first part of his confession before the joint-magistrate, the prisoner distinctly and deliberately admitted his intention of killing the deceased, describing how he did it and how he ascertained that she was dead before he stripped and left the corpse in the water.

The judge further on remarks "what possible reliance can be

1854. placed on the prisoner's assertion, that he only wanted to chastise, *not* kill, his victim."
 November 30. We entirely concur in the conclusions at which the judge has arrived, as to prisoner No. 12's guilt, but can discover no ground of mitigation of sentence in the circumstance upon which he suggests a minor punishment upon him. We convict him of wilful murder and sentence him to death.

Case of
 ISHUK GHOSH
 and another.

The prisoner No. 13 is in no way connected with the murder; it is not shewn that when he inveigled the deceased to elope with No. 12, he, or indeed the prisoner, No. 12, entertained any idea of killing the deceased. No conviction of accessaryship before the fact can therefore follow. Though his confession to complicity in inveigling the deceased out of her home was denied in the sessions court, still no legal inference of an offence of a different and graver nature can be deduced against him. We therefore acquit him, and he must be immediately released.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, Esq., *Judges.*

GOVERNMENT AND KULEE NUSHA

versus

OOZEER NUSHA (No. 7, APPELLANT,) NAZEERAH NUSHA (No. 8, APPELLANT,) NUBO NUSHA (No. 9, APPELLANT,) SOOKRAH NUSHA (No. 10,) ELAMDEE PRAMANICK (No. 11,) MUDHOO PRAMANICK (No. 12,) AND KOBEER KHAN (No. 13.)

Rungpore.

1854. CRIME CHARGED.—Prisoners Nos. 7 to 11, wilful murder of
 November 30. Aleo Nusha, the brother of the prosecutor; Nos. 12 and 13, being accessory both before and after the fact to the commission of the said crime.

Case of
 OOZEER
 NUSHA
 and others.

CRIME ESTABLISHED.—Nos. 7, 8, 9 and 10, culpable homicide and Nos. 11, 12 and 13, being accomplices in and instigating the same.

Committing Officer.—Mr. R. H. Russell, joint-magistrate of Bograh.

Tried before Mr. G. U. Yule, officiating sessions judge of Rungpore, on the 15th August, 1854.

Remarks by the sessions judge.—On the 25th July, Mudhoo Pramanick, prisoner No. 12, reported at the thannah of Sherepore, that on the preceding night a thief had entered the house of prisoner No. 7, and was making off with a *lota* when he was seized and beaten by prisoners Nos. 7 to 9, so severely that he died. On investigation however it appeared that deceased

Appeal rejected, the prisoners having killed the deceased alleged to be a thief, after having secured him.

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CASES IN THE NIZAMUT ADAWLUT.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, Esqs., *Judg.*

TRIAL No. 4.

GOVERNMENT,

versus

OODUN RUJWUR (No. 1.) PYROOAH RUJWUR (1
2.) THAKOOREE RUJWUR (No. 3.) TIRBHOOWUN
ALIAS BHOOWUN RUJWUR (No. 4.) AND SOOMEREE
RUJWUR (No. 5.)

TRIAL No. 5.

ROOPUN AND OTHERS, AND GOVERNMENT,

versus

OODUN RUJWUR (No. 6.) BUNDHOOA RUJWUR (No.
7.) PYROOAH RUJWUR (No. 8.) THAKOOREE (No.
9.) TIRBHOOWUN ALIAS BHOOWUN (No. 10.) SOO-
MEREE (No. 11.)

Behar.

154.

CRIME CHARGED.—*Trial No. 4.*—1st count, dacoity and plunder of property valued at Rs. 2-5, belonging to Gaindah Kullal and his servants; 2nd count, belonging to a gang of dacoits within the meaning of Act XXIV. of 1843.

October 10.
Case of
OODUN RUJ-
WUR and
others.

Trial No. 5.—1st count, dacoity and plunder of five sheep valued at Rs. 2-8, belonging to Roopun Gwalla, attended with the wilful murder of Kooheelee Kahar and severely wounding Khoojooa alias Boodhoo Gwalla and slightly wounding Gunesh and Bala Gwalla's witnesses; 2nd count, belonging to a gang of dacoits within the meaning of Act XXIV. 1843.

Committing Officer.—Mr. A. G. Wilson, deputy magistrate of Nowada.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 28th July, 1854.

Remarks by the sessions judge.—During the night of 28rd

Witness No. 1, Chumun Kullal,
" " 2, Mungur, ditto.
" " 3, Chumun, ditto. 2d

April last, the liquor shop, a short distance outside the village of Rookhee, was attacked by a band of twenty to twenty-five robbers armed with *ghurassas* or battle-

axes and loaded clubs, who plundered it all of the liquor and grain it contained, lights were lit, when several of the robbers were recognized by name and some by personal appearance. This occurrence forms a distinct commitment on the prosecution of Government, but as what followed of a more heinous character,

The prisoners were convicted in two separate cases of dacoity, one being a charge of dacoity with plunder, and the other of dacoity with wilful murder and wounding. They were convicted on the evidence to their recognition, and sentenced as recommended by the sessions judge.

1854.

happened a like distance outside the village, and the one occurrence immediately followed the other, the two occurrences and the consequent separate commitments will be best viewed together.

October 10.

Case of

Oodur Bala

witness

of

From the liquor shop the robbers went direct to the sheep-fold about a like distance outside the village and plundered it of five sheep. Khoojooa alias Boodhoo Gwalla the shepherd, and one of the prosecutors was the only person there. The robbers struck him whilst asleep, as he says, a severe blow with a heavy club which fractured the bone of the right arm and which after a month's treatment in hospital has left a deformed limb. Khoojooa, a young lad, ran off at once, was too frightened to recognize any one, and on reaching the village, fell down senseless. By this time, the alarm had been set up, Kooheelee Kahar the deceased ran up to the rescue followed by the seven eye-witnesses. The robbers first cut down Kooheelee, wounded Gunesh (witness No. 1) severely, and giving Bala (witness No. 2) a slight club blow on the head, went off. Gunesh had a narrow escape.

Witness No. 20, Chumun Kullal 1st.

,, 21, Mungar.

,, 22, Chumun, 2nd.

,, 1, Gunesh Gwalla.

,, 2, Bala ditto

,, 3, Jaddoo Roy Bubbun.

,, 4, Chuttoo Gwalla (deceased.)

,, 5, Pokhun Dosadh

,, 6, Soobun Mooshar.

,, 7, Gundowree Putwar.

Witness No. 11, Doctor Diaper.

Witness No. 11, Doctor Diaper. "He had a vertical scar on the right side of the abdomen of about six inches in extent, apparently the result of an incised wound. From its situation there can be no question that had it penetrated three-fourth inch deep, the cavity of the abdomen would have been exposed and nearly all his intestines come out, and death would have been the ultimate result. Kooheelee Kahar entered hospital on the 26th April last with an incised wound, a perfect gash on the right side of the top of the head extending from before backwards seven inches, nearly cleaving skull and brain in two as it is all but separated (hanging by skin) a large piece of bone, the size of the back of a *cutla* fish. The man also presented an incised wound about two inches long on the front of the right leg, and several scratches and bruises on different parts of the body. He died in convulsions on 27th April. A few hours after death the scalp was dissected away from the skull and a piece of bone (here produced) detached, the brain was found soft, pulpy and completely disorganized. The ordinary *ghurassa* or battle-axe now in court was a likely instrument to have produced the above injuries." Kooheelee was speechless until he reached the hospital when, strange to say, he gave his deposition at length before the magistrate on the 27th, the day of his death.

1854.

October 10.

Case of
Oodun Ruj-
wurs and
others.

At the plunder of the liquor shop Chumun Kullal (witness No. 1) from the first recognized by name Oodun prisoner No. 1 and 6, Pyrooah prisoner No. 2 and 3, Thakooree prisoner No. 8 and 9, Tirbhoozun prisoner No. 4 and 10, Soomeree prisoner No. 5 and 11 of Pultoo Chuq by name and added that these were Rujwurs of Cazier Chuq whom he could also recognize by person, and when subsequently several Rujwurs of that place were crowded together, he brought out Bundhooa prisoner No. 7 and 3, others released by the deputy magistrate. He saw *ghurassas* in the hands of Oodun, Thakooree and Bundhooa; Mungur (witness No. 2,) also recognized all the prisoners but Bundhooa, but before the police he did not name Thakooree and Soomeree. He also says he saw four *ghurassas* in the robbers' hands one in Thakooree's and the rest he don't remember, and Oodun had a *lohanger* or loaded club; Chumun Kullal 2nd, only recognized Oodun and Mungur absconded, Oodun kicked him. He saw four *ghurassas* in the robbers' hands, two of which he recognized in Oodun and Mungur's hands.

The six eye-witnesses,* No. 4 having deceased before trial in the sessions court, depose in this court to having recognized all the prisoners except Pyrooah prisoner No. 8, whom all had like previously named both before the police and deputy magistrate during the outrageous violence at the sheepfold. They never named Kooheelce's assailants to the police,

but when questioned by the deputy magistrate and voluntarily before this court, they named them at random amidst general contradiction and prevarication. To the deputy magistrate and this court Gunesh (witness No. 1) named Thakooree as Kooheelce's assailant, although he distinctly told the police he could not name any one. Before this court he did not know who struck him the severe cut he received, yet for this also he had named Thakooree to the magistrate. Bala (witness No. 2,) could not name them to the magistrate, yet he told this court Bundhooa struck Kooheelce the *ghurassa* blow on the head and Thakooree a blow with a loaded club on the side. Juddoo (witness No. 3,) in reply to the deputy magistrate's question if Bundhooa had struck Kooheelce, replied he only saw Oodun and Thakooree, whilst to this court he detailed Oodun as striking the deceased on his back, Thakooree on his head, and Bundhooa on his right foot. To the magistrate Pookhun (witness No. 5,) only named Oodun and Bundhooa. Soobhun (witness No. 6,) only heard from the deceased that Bundhooa had struck him and Gundowree (witness No. 7,) did

1854.

October 10.

Case of
Oodun Ruj-
wur and
others.

not particularly name any one, yet all three adopted Juddoo's (witness No. 3,) details before this court.

Kooheelee's deposition before the magistrate alone named Bundhooa as having struck him on the head, and distinctly declared that he had not recognized Bundhooa's companions. It was in itself an extraordinarily consistent statement of the occurrences for one to have given, who had continued speechless after them until he reached the Hospital, and who died only a few hours after having given it on the same day the 27th, that the greater portion of the investigation itself was being held at a great distance in the interior, and of which necessarily he could not have been cognizant at the time, still it is far from satisfactory. All the witnesses recognized all the prisoners, except Bundhooa both by name and person, as near neighbours residing in the village of Pultoo Chuq, and Bundhooa by person only, as residing two or three miles off at Cazie Chuq. How then came the deceased to omit naming those he must have been most familiar with, and name only one whom the witnesses could not? Futeh Kahar the deceased's father, prosecutor, admits that he himself had not known Bundhooa by name prior to the occurrences, and he cannot say how his son did, and the only probable explanation that has been given and then only on hearsays is from Juddoo (witness No. 3,) who had heard that the deceased must have met Bundhooa at the liquor shop and thus have become acquainted with him.

The day of the night of the occurrence there had been an assemblage of Rujwur at Thakooree's where the within witnesses saw all the prisoners, ostensibly congregated together about one Tota's marriage ceremony at Rewar, six miles off. Thakooree first set up an *alibi* grounded on his presence with the ceremony which having been denied, he set up a different *alibi* before the magistrate, which he did not again repeat before this court.

Witness No. 13, Nem Gwalla.
 " " 14, Karoo Kahar.
 " " 15, Shaikh Boodhoo.
 " " 16, Dipoo Gwalla.

The prisoners have always pleaded *not guilty*, have never set up any thing but the most frivolous defences which, before this court, resolve themselves generally into charging Chumunlal Kullal with spite for not continuing to drink at his liquor shop, and into petty joint disputes with Roopun prosecutor and others about cutting grass in which even Bundhooa joins. They cited no witnesses. The prisoners were apprehended as follows at different places on various dates. Oodun on 27th April. Bundhooa on ditto ditto. Pyrooah 6th May. Thakooree, as reported with a *ghurassa*, on ditto ditto. Tirbhoozun 8th May and Soomeree 11th May.

In this as in many serious cases, more especially belonging to the Nowada division, Rujwurs will be invariably found banded together in collusion with the Rujwur chowkeedar. The Rujwurs as a class are as violent and lawless as they are needy and perhaps somewhat oppressed by the other classes. The usual consolation they give their victims is, that it is the Rujwaree *hookum*. Horil chowkeedar of Rookhee, the place of occurrence, is Pyrooah, prisoner No. 8's father, cousin to Ghumundee another chowkeedar, Tirbhunwun prisoner No. 10's father. I find Horil's statement before the police, No. 63 of 7th May. He was forwarded to the deputy magistrate, but I do not gather from the record how he has been disposed of. He seems so much feared that all the Rookhee witnesses have done their best before this court to screen both father and son. Of the other prisoners Oodun prisoner No. 6, another chowkeedar is Soomeree prisoner No. 11's father, and both Bundhooa prisoner No. 7 and Thakooree prisoner No. 9, also are chowkeedars. The object of plunder in the cases under trial could only have been to provide means for a carousal, and where so many chowkeedars were concerned, it must have been on a large scale, and one they must have been prepared to carry out, with a high hand. Violence even in petty trifles when opposed, is the characteristic, and not the exception amongst Rujwurs as serving to maintain their rule. Without this view of their character and connections the occurrences under trial would ordinarily seem unnatural and preposterous. No attempt have been made to trace out this carousal. It could scarcely have been expected of the Rookhee people after the manner in which they had been punished, and the police reached the spot too long afterwards, the thannah being distant fourteen miles, the inquiry not commencing until the 26th.

Direct proof of the prisoners' guilt rests solely on their recognition, during the attack on the liquor shop immediately followed by that on the sheep-fold. Of the two occurrences themselves, and their cruel results, for they nearly ended in two murders instead of one, there can be no doubt. The evidence to the recognition at the sheep-fold before this court is of a most exaggerated character. It was a dark night and the little the

Witness No. 1, Gunesh Gwalla.	witnesses could have distinguished,
2, Bala Gwalla.	as in the hurry of the
3, Jadoo Roy Bahun.	moment they ran up, following
4, Chuttoo Gwalla (died).	the deceased, must have been
5, Pokhun Doodadh.	of the most indistinct character
6, Soobhun Mushar.	and that Gunesh (witness No.
7, Gundowra Putwar.	1,) and Bala Gwalla (witness
	No. 2,) were at least present on

the occasion, their own wounds vouch for. These six witnesses' evidence before the police were far more natural. They then

1854.

October 10.
Case of
Oodun Ruj-
wun and
others.

1854.

October 10.

Case of
Oodun Rus-
wun and
others.

only generally recognized the prisoners by voice and sight. The two wounded witnesses, Gunesh and Bala, did not even recognize their own assailants, but as time went on, and one court followed another, no exaggeration was too great for their sight, though at the same time their contradiction and exaggeration are so palpably absurd, as to place them beyond the probability of having been tutored, even had there been reason to suspect any thing of the kind, which I do not find in either case. I therefore reject their testimony in toto as to their professed knowledge of any particular act of each prisoner, but consider their recognition of them generally at the time of the occurrence, according to their original statements, the most truthful. I regard the recognition of all the prisoners, Bundhooa by person

Witness No. 20, Chuman Kullal
1st.

" " 21, Mungur ditto.

" " 22, Chumanditto 2d.

intelligent of the three. The much frightened and the last is a mere youth. Had their evidences been tutored, those of

Witness No. 13, Nem Gwalla.

" " 14, Karoo Kahar.

" " 15, Shaikh Boodhoo.

" " 16, Dipoo Gwalla.

and the rest by name, at the liquor shop as truthful. Chuman (witness No. 20,) has always given the fullest and most consistent evidence, and is the most other two appear to have been given so defective. The evidence to the recognition of all the prisoners assembled at Thakooree's, prisoner No. 9, during the day-time, also stands good. Taking

all these circumstances under one common view, as corroboration of one another, I convict Oodun prisoner No. 1 and 6, Pyrooah prisoner No. 2 and 8, Thakooree prisoner No. 3 and 9, Tirbhoowun prisoner No. 4 and 10, Soomeree prisoner No. 5 and 11, of the dacoity and plunder of property, valued at Rs. 2-5 belonging to Gaindah Kullal and his servants, Bundhooa prisoner No. 7, having I think been erroneously omitted from this commitment, and all the above-named prisoners including Bundhooa prisoner No. 7, of dacoity and plunder of five sheep valued at Rs. 2-8, belonging to Roopun Gwalla, attended with the wilful murder of Kooheele Kahar, severely wounding Khoojooa alias Boodhoo Gwalla, and also wounding Gunesh and Bala Gwalla's, witnesses, and I would select for punishment as the leaders, Oodun prisoner No. 1 and 6, Bundhooa prisoner No. 7 and Thakooree prisoner No. 3 and 9, both from their having been seen at the liquor shop by Ohumun Kullal (witness No. 20,) with *ghurrassas* in their hands, the circumstances which connect them with these occurrences, their being chowkeedars, and all the remaining prisoners only sons of chowkeedars, as also from their personal bearing and appearance, and would recommend their being sentenced to imprisonment for life in the Allipore jail and the remaining prisoners Pyrooah prisoner No. 2 and 8, Tirbhoowun prisoner 4

and 10, and Soomeree prisoner No. 5 and 11, each to fourteen years' imprisonment in labor, irons and banishment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.)—The sessions judge, in his letter of reference, has given a very full and detailed account of the evidence adduced against the prisoners. The proof against them, in both cases of robbery, depends entirely on the credibility of the witnesses, who identified the prisoners on those occasions.

We concur generally with the sessions judge in the opinion expressed by him regarding the value of this evidence; there is no reason to believe the witnesses were tutored, and their anxiety to prove more than they are likely to have known, has very properly placed the sessions judge on his guard against trusting too far to the particulars detailed by them, and led him to consider the proof sufficient only to establish the recognition of the prisoners as the perpetrators of the crime with which they are charged.

We uphold the conviction, and on the whole, the measure of punishment proposed, under the circumstances of the case, appears to us just and proper: sentence will issue accordingly.

PRESENT:

A. DICK, AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT AND JOOGUL CHRISTIAN,

versus

CHYETUNNO CHRISTIAN (No. 1,) AND MUSST. RUNGUN MALLAH (No. 2.)

CRIME CHARGED.—1st count, wilful murder of Mussumat Kokillah; 2nd count, being accomplices in and privy to the above crime.

Committing Officer.—Mr. H. A. R. Alexander, officiating Magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 6th September, 1854.

Remarks by the sessions judge.—The deceased Kokillah was a girl of ten or twelve years of age, and was married rather less than a year ago, to the male prisoner, Chyetunno Christian. The female prisoner, Rungun Mallah was sister-in-law to Chyetunno, with whom he had lived since she became a widow, which

* Witness No. 5, Chhoramonee Holdar.

„ „ 6, Tilluck Chung Jeonee.

to him, but notwithstanding so completely did she consider her-

1854.

October 10.

Case of
OONUN RUJ-
WUA and
others.

Backergunge.

1854.

October 11.

Case of
CHYETUNNO
CHRISTIAN
and
another.

Capital sentence was only not passed on account of the degree of proof, not being considered such as to justify an irrevocable sentence.

1854.

October 11.

Case of
CHYETUNNO
CHRISTIAN
and
another.

* Witness No. 9, Nuddynam Chris-
tian.
" " 10, Surroop ditto.
" " 11, Surrien ditto.
" " 12, Nagar ditto.

self entitled to Chyetunno's exclusive affections, that she would on no account allow them to be shared, even with his lawful wife.

This illicit intercourse was carried on after his marriage, and the Christians* of the village had fined the prisoner for the scandal caused to their community by his behaviour. The body of

Kokillah, found murdered, has put a check to this state of affairs, and brought matters to the present serious issue.

† Witness No. 8, Panch Cowree.
" " 13, Kumcheeran.
" " 14, Sheebaram, Chow-
keedar.

On the morning of the 5th July, as the villagers† began to move about, the body of Kokillah was found in a hole with shallow water, in a complete

state of nudity, except that the end of a sheet was bound round the ankle of one leg, one ear was split, or cut, or smashed, (it does not quite appear which) the mouth was full of blood, and blood issued from the ears, and those‡ who observed the body more

‡ Witness No. 8, Panch Cowree.
" " 9, Nuddynam.
" " 10, Surroop and
others.

closely, saw black marks on either side of the gullet, indicating that the murder had been caused by strangulation. These things leading to a belief that a murder had

been committed, and the prisoners being naturally suspected of it, the villagers put them and the body on board a boat and hastened with them at once to the station. Arriving at the house of the Rev. Mr. Page, the Baptist Missionary, intimation of the affair was sent by him to the magistrate. An investigation was set on foot, and the prisoners were sent for. They had in their defence before the kotwallah darogah, denied the murder, and affirmed that the deceased must have fallen into the water in a fit, but when an officer went to Mr. Page's house, where the prisoners were, to take them to the court of the magistrate, it would seem that the male prisoner became

§ Witness No. 8, Panch Cowree.
|| " " 7.

terribly alarmed, and admitted to one of his fellow Christians,§ that he saw his sister-in-law do

the deed. Mr. Page|| was told this immediately, and Chyetunno again made the same statement before him. The female prisoner on her part denied that the murder was committed by her, and said that Chyetunno did it in her presence.

When taken before the deputy magistrate, to whom the investigation had been entrusted, the same recriminations followed.

Witness No. 3, Kally Comar
Dhur.
" " 4, Dhurmonarayn
Doss.

The statement of the male prisoner was, that "Rungun lived with me, and a criminal intercourse existed between us. She one day said to me, if you sleep

with Kokillah, I will kill her. On Tuesday night, at about 9 o'clock, calling Kokillah out of the house, Rungun took her under a mango tree, on the west bank of the tank adjoining my house, and there she, in my presence, throttled her. My wife never uttered a syllable and she expired then and there. I saw this and I sat me down. Rungun threw the body in a hole and went away. I felt great remorse for the fate of my wife, and I stayed at the place to keep watch that no animals might eat the body; I passed the whole night in this way, I did observe the black marks on the body but I said nothing of them at the time, fearing that Rungun might decamp. The ear was bitten off by a crab while the body lay in the hole, it swam away as we took up the body, I was afraid to tell all this to the darogah, so I said my wife fell into the hole, I have also told our clergyman all I have stated here."

The statement of Rungun was, that on Tuesday night at 9 o'clock, Chyetunno took his wife Kokillah to the west side of the tank and there throttled her, I was on the east bank of the tank, and hearing her scream, I went up to Chyetunno and forbade him to murder his wife, but he threw me off, and accomplished his purpose. He then threw the body in a hole and dragged me home, we then went to sleep each in our own place. Early the next morning the villagers assembled and suspected that there had been murder. Chyetunno was tied and put on board a boat and there his hands were loosened, I wanted to confess on the spot, but Chyetunno told me not, at length I was sent in, and Chyetunno and the prosecutor told me to say that Kokillah fell into the hole.

On their trial at the sessions, they both maintained that Kokillah fell into the hole in a fit.

The prisoner Chyetunno denied having made the statement recorded as his by the deputy magistrate, and called three witnesses to prove that the deceased was subject to fits. They however say, that they are not aware of any such thing.

The female prisoner being asked, after her confession before the deputy magistrate was read aloud to her, whether she made it, replied distinctly that she did. Being asked which of her two statements, her foudary or her sessions one, was the true one, she said the latter was the true one. On being asked why she made a statement contrary to the truth before the deputy magistrate, she affirmed that she never made the statement imputed to her.

The only direct evidence, as to the degree of participation taken by each prisoner in the crime, is their respective confessions. Each allows that the deceased was killed by strangulation, no one but the two were present at it, both left the house with the deceased, both witnessed the murder, neither did any thing effectual to rescue the girl or to obtain aid to save her

1854.

October 11.
Case of
CHYETUNNO
CHRISTIAN
and
another.

1854.

October 11.

Case of
CHYETUNNO
CHRISTIAN
and
another.

life, and both kept the matter secret till alarmed at the probable consequences of an approaching discovery of the truth, they simultaneously charge each other with the crime, in the hope of averting its consequences.

When the medical officer saw the body, he was unable, so his report says, to examine it, owing to its putrid state. The kot-wallee darogah's report is silent as to any marks about the neck, probably from the same cause which has deprived the case of a professional *post mortem* enquiry. The body was swollen it appears to three times its natural size when Dr. Scanlon saw it, and it is not surprising that in that state the darogah should have failed to observe whether there were any marks on the neck or not. Indeed from the very first the marks could not have been very distinct, for many persons saw the body without perceiving the marks, nor is it likely, from the way that the murder was effected, which was probably partly by pressure of the throat and partly by suffocation from drowning, that any very distinct marks would be left on the throat. However, the want of a proper *post mortem* examination is rendered of little consequence, as the prisoners' confessions supply the best and the most undoubted evidence as to the cause of death.

The verdict of the law officer is, that the prisoners are guilty of wilful murder, on violent presumption, and of privy on full legal proof, and that they are liable to punishment by *akoobut*.

There is not in my opinion sufficient evidence to bring in the parties guilty of wilful murder. The presumption is very strong that they both assisted at it, but it is not impossible that only one of them did it. The question then is, who did it, and who looked on? There is no means of determining this, and therefore the parties cannot, I think, be legally convicted of more than privy. But their conduct before, at the time and after the deed, shows such unity and evinces, from first to last, the existence of a thorough understanding between them, that both were clearly, designedly present at, and consenting to the cruel and predetermined murder, and are deserving of punishment, the very highest, short of death, which it is in the power of the superior Court to award. It is my recommendation that, that sentence may be awarded.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) The Court concur with the *mooftee*, and find both prisoners guilty of murder on violent presumption. There is evidence that an illicit intercourse existed between them, for about a year before the marriage of the male prisoner to the deceased. There is evidence that when the corpse of deceased was discovered in the pond, near the male prisoner's dwelling, (with whom the female prisoner resided,) that marks of strangulation were seen on the neck, and blood issuing from the mouth and the nose. The prisoners have ac-

cused each other of the murder by strangulation, and confessed to seeing the crime perpetrated, though both at first declared, as at last they again averred, that the deceased was subject to fits, and must have fallen into the water when so attacked. The appearances on the corpse disprove these statements, and there is no evidence that deceased was subject to fits of giddiness. The evidence of Mr. Page, the Baptist Missionary, who is the pastor of the prisoners, and who married the deceased to the male prisoner, evinces that the deceased was a strong hale girl of thirteen or fourteen years old, and that the female prisoner alone could not have murdered her. The circumstantial evidence is, therefore, violently presumptive that both prisoners were concerned in the murder.

The Court cannot concur with the sessions judge in convicting of privy to murder only, and then passing a sentence of imprisonment for life on the prisoners, as guilty of a more heinous crime. They convict both prisoners of murder, on violent presumption, and sentence both to imprisonment for life; the male prisoner in transportation; the evidence against them not amounting to that degree of sufficiency which would warrant the irrevocable sentence of death. See case of Bhagbut Gurrain versus Kalee Churn Surnokar, March 29, 1851, N. A. R. and of Subessur Bonick, February 14, 1852, N. A. R.

The Court observe, for the future guidance of the sessions judge, that the confessions of the prisoners taken before the deputy magistrate, should have been filed in original in the record of the trial in sessions, and copies filed in the record of the magistrate's court. Par. 6, No. 6, Circular Order, dated 16th July, 1830.

PRESENT:

B. J. COLVIN, Esq. *Judge.*

GOVERNMENT AND OTHERS,

versus

JULPEEDUT JHAH (No. 1.) AND BABOOLAL
ACHARGE (No. 2.)

CRIME CHARGED.—1st count, being accomplices in the wilful murder of Pearee Jhah; 2nd count, being accomplices in maliciously burning down the houses, property, grain, &c. of Eklal Jhah; 3rd count, being accomplices in the riotous assault with forcible plundering and destruction of property (not amounting to dacoity) of Eklal Jhah, valued at about Rs. 4000; 4th count, being accomplices in the wounding with intent to murder Gopee Jhah.

1854.

October 1

Case of
CHRYTUNNO
CHRISTIAN
and
another.

Purneah.

1854.

October 12.

Case of
JULPEEDUT
JHAH
and another.

The prisoners were convicted as they had been named on the previous trial of other parties accused of the same offence.

1854. Committing Officer.—Mr. H. Doveton, deputy magistrate Mudypoorah.

October 12. Tried before Mr. G. Loch, officiating sessions judge of Purneah, on the 21st June, 1854.

Case of JULPEEDUT JHAH and another. *Remarks by the officiating sessions judge.*—On 7th December, 1853, the prisoners accompanied a large body of armed men, headed by Heah Jhah, and attacked the prosecutors Eklal Jhah's house, in Mouzah Sitohur. They commenced destroying the property, Eklal Jhah concealed himself, but as Pearee Jhah, a brother of the prosecutor, endeavoured to escape, he was cut down and died the same night from the effects of his wounds. The prosecutor, Gopee Jhah, was also beaten and wounded, and his effects plundered, and the rioters, after the pillaging the premises, carried off property to the value of 4000 rupees, and set fire to one house, from which the fire communicated to the neighbouring houses, twelve of which and three golahs, full of grain, were destroyed. The prisoners were recognized by the

* Prithnath Jhah.
Lullit Jhah.
Modoe Jhah.
Hurry Jhah.

cos from his house, yet there can be no doubt that both of

† Heah Jhah and Hul-
vee Jhah fourteen years
each in banishment.

Bhugwan Tewarry and
Hurburn Singh, ten years
each.

Roopnarain Doss and
Hyburn Acharge seven
years each.

In concurrence with the law officer, I convict the prisoners Julpeedut Jhah and Baboolal Acharge of the charges on which they were committed, but as they acted a subordinate part in the riot, I would recommend that a sentence of seven years with labor and irons be passed upon them.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin). Having compared the evidence given on the former trial, in which both the prisoners were named, with that recorded on the present occasion, I concur in the conviction of the prisoners and sentence them as proposed.

PRESENT:
H. T. RAIKES, Esq., *Judge*.

GOVERNMENT AND MUSST. FOOLEE,
versus
SHEIKH ASSOO MUNDLE.

Dacca.

1854.

CRIME CHARGED.—Wilful murder of Sheikh Pyzaree, the husband of Musst. Foolee, prosecutrix.

CRIME ESTABLISHED.—Culpable homicide of Sheikh Pyzaree. Committing Officer.—Mahomed Nazem, principal *sudder* ameen. Tried before Mr. S. Bowring, sessions judge of Dacca, on the 2nd August, 1854.

October 13.

Case of
SHEIKH AS-
SOO MUN-
DLE.

Remarks by the sessions judge.—From the evidence it appeared, that the prisoner, who is related to the prosecutrix, to the witnesses and the deceased, had some quarrel with the latter about a path, and the gomashtah or other village authority, decided against the prisoner. Shortly afterwards, the prisoner's cattle strayed, or were driven into a field belonging to the deceased and his brother, and on deceased interfering, the prisoner struck him a blow on the head with the branch of a tree, which caused death the next day.

Prisoner
convicted of
culpable homi-
cide, sentenced
to 7 years' im-
prisonment.
Appeal re-
jected.

There were some slight discrepancies in the evidence, but of the principal fact, the death of the deceased at the hands of the prisoner, there could be no doubt.

The prisoner declared the whole charge a fabrication. He called witnesses who established nothing in his favor.

The law officer found the prisoner guilty of culpable homicide, in which finding I concurred. There was no evidence that the prisoner intended to kill the deceased.

The civil surgeon described the wound as most extensive, and the club, or branch of a tree, with which it was inflicted is very heavy. Had I not had some doubts of the degree of provocation offered, I should have referred the case, for a more severe sentence than I am competent to pass.

Sentence passed by the lower court.—To be imprisoned for the period of seven (7) years with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The evidence leaves no doubt that the prisoner struck the blow which killed the deceased, the woman Dunneea, who saw the prisoner strike the deceased, is confirmed by others who saw the prisoner go and return from Pyzaree's house with the club in his hand, and found Pyzaree senseless as deposed to by her.

The prisoner only pleads that he did the deceased no injury, but attempted to prevent him and his brother from quarrelling and fighting, and heard the next day of the former's death.

I see no reason to interfere with this conviction and reject the appeal.

PRESENT :

A. DICK, AND B. J. COLVIN, Esqs., *Judges*.

JOOGUL KISHORE DEB AND GOVERNMENT,

versus

Mymensingh. RUKHA DHOOBEE (No. 10,) CHOITAH CHUNG (No. 11), LUKHUN CHUNG (No. 12) AND BHOLAH DHOOBEE (No. 13).*

1854.

October 14. **CRIME CHARGED.**—1st count, prisoners Nos. 10 and 11, dacoity in the house of the prosecutor and plundering therefrom cash Rs. 6-4, and property consisting of gold and silver ornaments, brass, cloth and a box, &c. valued at Rs. 104-4-6, and murdering Sorosuttee Dashea; 2nd count, knowingly receiving and possessing property obtained by the above dacoity. Prisoners Nos. 12 and 13, 1st count. The above first count; 2nd count, being accomplices in the above first count; 3rd count, privy to the above first count.

A party who confessed to having been one of the gang, (although he remained outside,) who committed a dacoity in which an inmate of the house was so severely wounded as to die some weeks afterwards in consequence of the injury received, was sentenced to imprisonment for life.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 26th August, 1854.

Remarks by the sessions judge.—It is in evidence that on the night of the 15th Choitro last, or 26th March, 1854, a party of about sixteen or seventeen persons attacked the prosecutor's house, entered therein and breaking open a desk, carried it off to a distance, took out the cash and property therefrom, left it and decamped; that as they entered the house one Sorosuttee Dashee, a servant girl of Gobind Newgee, who occupied the same premises, came out and was immediately wounded by them. The prosecutor was absent from home and his servant, Basheeram Chung Sircar (witness No. 47) reported at the thannah of Gabtulle that a theft was committed; but from the daring manner in which the crime had been perpetrated, the parties having been described to have disfigured their faces and with cloths bound round their faces and to have been armed with *lattees*, the magistrate held it to be a dacoity and not theft. The desk was found at about an hour's distance lying broken, but no clue could then be obtained as to the actual perpetrators.

Some days afterwards, the darogah's private mohurri, Ramnarain Chowdree, having heard that a *saree* and an arcot rupee, answering the description of those lost by the prosecutor, had been pledged by Buddeenath Nundee and others to Munceram Sircar and Ramdhun Sircar, informed the darogah of the matter, and this was the first step which led to the apprehension of the prisoners under trial.

* Acquitted by the Lower Court.

1854.

October 14.

Case of
RUKHA
DHOOBEN and
others.

Muneeram Sircar made over the articles to the darogah, which were immediately recognized by the prosecutor to be what he lost. Buddeenath, when called upon, stated that he purchased them from prisoner No. 12, and suspicion having been then attached to Nos. 12, 10 and Buddeenath, they were apprehended and No. 10, gave up some property, saying that Nos. 11, 12* and others, had committed the dacoity and gave him these articles to keep, which he concealed in a chest. No. 11 also gave up some articles, saying that No. 12 and others committed the dacoity at the prosecutor's house, and gave them to him to keep, and he accordingly placed them underground in the cow-house in a garden, and urged enmity with No. 10, as the cause of his being charged. Prisoner, No. 12, appeared before the magistrate, who sent him to the darogah, and he there admitted that he pledged the *saree* and the arcot rupee, which he stated was his own property, having got the *saree* in a lottery. No. 13 denied the charge, and stated that he heard that a dacoity was committed at the prosecutor's house by No. 12 and others, and that No. 12 had given some articles to No. 10 to keep.

Before the magistrate prisoner, No. 10, admitted that he, Nos. 11, 12 and others had entered the prosecutor's house and committed the dacoity, but he did not go near, and that No. 12 gave him some articles, which he gave up to the police. No. 11 also admitted that No. 12 and one Kangaleah Joogee gave him some articles, which he gave up, but he did not himself commit the crime. No. 12 denied the charge, and stated that his confession was extorted by the police, and he was instigated by Buddeenath's father to say that he gave him the *saree* and the arcot rupee. No. 13 denied the charge, and stated that he had been suspected merely because No. 10 was his relative.

Before the sessions court No. 10 denied the charge, but admitted his thannah confession, and said his witnesses would prove how the articles given up, found their way into his chest (the key of which as stated by his father, witness No. 33, used to remain with him). No. 11 said he had nothing further to urge, that his witnesses would prove the enmity with No. 10; that he was of good character and did not commit the dacoity; denied that he confessed in the thannah, but admitted his foudjarry confession. No. 12 denied his thannah confession, which he said was extorted by the police and written down at the dictation of Buddeenath Nundee, and pleaded enmity with the darogah's assistant, Ramnarain Chowdree, regarding a woman. No. 13 denied the charge and urged that his witness would prove that he was of good character.

The wounded woman, Sorosuttee Dashee, died on the 29th Bysack, or nearly a month and a half afterwards, and the civil surgeon, who examined the corpse, deposed to death having been caused by an effusion of blood on the surface of the brain and

1854. the injury must have been caused by a severe blow on the head with a heavy instrument, such as a *lattee*. That there was a small lacerated wound on the forehead above the right eye, and he considered that the injury to the brain was caused by the same blow which caused the lacerated wound, that she might have survived some days or it might have proved fatal immediately, and it is possible that a person might linger for a month and a half in an insensible state.

October 14. Case of
RUKHA
DHORKEE and
others.

As there was no proof against prisoner No. 13, that he committed the crime, except that he was a relative of prisoner No. 10, and as the witnesses examined on his behalf gave him a good character, I acquitted him and directed his release.

The witnesses examined for the other prisoners knew nothing of the points on which they were cited. I therefore convict prisoner No. 10 of dacoity attended with murder, and knowingly possessing property obtained thereby, and Nos. 11 and 12 having in their possession property obtained by the above dacoity, knowing it to be such, and recommend that No. 10 be imprisoned with labor and irons in banishment beyond sea for life, and Nos. 11 and 12 to fourteen years with labor and irons in banishment from the district.

I tried this case under Act XXIV. of 1843.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) We concur in the sentence proposed to be passed upon the prisoners Nos. 10 and 11. Although it is proved that the death of the deceased was owing to the blow she received at the hands of the dacoits, there is nothing to shew that the prisoner No. 10 took an active part in the dacoity. The only evidence that he was there at all is his confession before the magistrate, in which he states that he remained outside the house.

The evidence against No. 12 is not sufficient for conviction. Even if he had the *saree* and rupee, which he however denied before the magistrate and sessions judge, there is no evidence that he knew them to be stolen property. There has been great remissness on the part of the sessions judge in inquiring into the facts stated at the police by Bydnath Nundee, Munneeram Singh and Ramdhun Deb. They should have been examined, as well as Tarnee Kishore Acharge; from whom, if Bydnath Nundee's story was true, No. 12 said he had received the *saree*. Although the sessions judge examined Sheikh Baramudee the only witness to the point in the calendar, his deposition was so contradictory of previous statements of the parties above named, that further inquiry should have been made into the facts of whether No. 12 had sold the *saree* and rupee to Bydnath Nundee. We acquit No. 12, and direct his release.

PRESENT :

J. DUNBAR, AND H. T. RAIKES, Esqs., *Judges.*

GOVERNMENT AND NUDDEA CHAND SOOKOOL,

versus

Midnapore.

SUMBHOORAM DOSS (No. 2,) MUDHOO PATTTER, (No. 3,) MOOCHEERAM MUNDLE (No. 4,) MUDHOO DOSS (No. 5,) CHOWDRY BHOOYA (No. 6,) NUJEEB KHAN (No. 7,) BOODHOODEEN (No. 8,) NUNDOO DOSS (No. 9,) SHEIKH ZUMEER (No. 10,) NAMDAR KHAN (No. 11,) BEESOO DEY (No. 12,) MUDHOO DOSS ORIAH (No. 14,) BASHEEROODEEN (No. 15,) AND UNUND DHOBA (No. 18.)

1854.

October 14.

Case of
SUMBHOORAM
Doss and
others.

Conviction
and sentence
passed by the
sessions judge
in a case of du-
coity attended
with torture,
upheld in ap-
peal.

CRIME CHARGED.—1st count, dacoity attended with torture, or in having committed a dacoity in the house of the prosecutor, Nuddea Chand Sookool, beaten and tortured (with torches) witness No. 73, and plundered property to the value of Rs. 381-13-0; 2nd count, Nos. 2 to 12 and 18, having in their possession plundered property acquired in the above dacoity, knowing the same to have been so obtained.

CRIME ESTABLISHED.—Dacoity with torture and plundering, on prisoners Nos. 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 14 and 15, and on prisoners Nos. 9 and 18, accessory after the fact.

Committing Officer.—Mr. G. Bright, officiating magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 5th August, 1854.

Remarks by the sessions judge.—On the night of the 28th April, the house of the prosecutor was broken into by a gang of dacoits, who, after torturing and ill using the inmates, carried off property to the value of Rs. 381-13-0. The prisoners pleaded *not guilty*. The witnesses No. 1, Mudhoo Goochat, and No. 73, Srimuttee Brijomohunnee, depose to the fact of the robbery, and the circumstances attending it, and the former swears to the identity of the prisoner No. 2, Sumbhooram Doss, as one of the dacoits concerned, whose arrest and subsequent confession had led to the discovery and apprehension of the rest of the gang. The prisoners Nos. 2 to 18, confessed in the mofussil, all with the exception of No. 9, Nundoo Doss, and No. 18, Unund Dhoba to having been actually concerned in the robbery, and Nos. 9 and 18 to having had part of the stolen property in their possession. No. 2, Sumbhooram Doss, No. 3, Mudhoo Patter, No. 5, Mudhoo Doss, No. 6, Chowdhry Bhooya, No. 7, Nujeeb Khan, No. 8, Boodhoodeen, No. 14, Mudhoo Doss Oriah, No. 15, Basheeroodeen, and No. 18, Unund Dhoba, repeated their con-

1854.

October 14.

Case of
SUMBHOORAM
Doss and
others.

fessions before the deputy magistrate. In their defence in this court, they plead that their confessions were extorted by intimidation and ill usage, and cite witnesses to character. The confessions carry with them every appearance of truth and are supported by the *sooruthal*, and in the instances of Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15 and 18, are corroborated by the discovery of property, which had been or was actually in their possession. The prisoners, No. 2, Sumbhooram Doss and Moocheeram Mundle, are notorious offenders, have been frequently before the court, and in more than one instance have been convicted and sentenced on charges of theft and dacoity. The prisoner No. 9, Nundoo Doss, is a chowkeedar, and is declared in some of the confessions to have been the instigator, and in others as actively concerned in the robbery, this may, or may not, be the fact, but there is abundant proof that he was an accessory after the fact in the first instance, in withholding from the police the information where the stolen property was concealed, and subsequently pointing it out. The evidence against the prisoners, Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14 and 15, is I think clear and conclusive, and they are accordingly sentenced as indicated in the statement, the police deserve credit for having prosecuted their inquiry to so successful an issue. The prisoners are unquestionably part of one of the gangs that infest the district under their separate leaders of whom the prisoner, Sumbhooram, is one of the most enterprising and notorious.

Sentence passed by the lower court.—Nos. 2 and 4, fourteen (14) years' imprisonment each with labor and irons in banishment. Nos. 3, 5, 6, 7, 8, 10, 11, 12, 14 and 15 to nine (9) years' imprisonment each, with labor and irons. No. 9 to (7) seven years' imprisonment with labor and irons, and No. 18 to (5) five years' imprisonment with labor and irons, and all to pay a fine under Act XVI. of 1850, of Rs. 341-7-0, jointly and severally.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) The genuineness of the confessions, made by all the prisoners in the mofussil, has been established by the voluntary production of property to the police, or by the admission and repetition of their confessions in the presence of the magistrate. We see no reason to interfere with the conviction and reject this appeal.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, Esqs., *Judges.*

DHUNOO BEWA.

versus

GOBRAH.

CRIME CHARGED.—Wilful murder.

Committing Officer.—Mr. W. Agnew, magistrate of Gawalparah.

Assam.

1854.

Tried before Major John Butler, officiating deputy commissioner of Assam, on the 14th September, 1854.

October 16.

Remarks by the officiating deputy commissioner.—The prosecutrix, Dhunoo Bewa, states as follows.

Case of
GOBRAH.

In the present month of Srabon, on a Friday, I do not know the date, about one *pahur* of the day, (afterwards stated about one *pahur* remaining of the day) my orphan grand-daughter, Musst. Dupuhoree, aged about three years, was murdered by my son-in-law, Gobrah Jhalo, fisherman, with the *dao* produced in court, while she was sleeping, by one blow on the neck. I know no cause for the prisoner having murdered the little girl, she was the child of his sister-in-law. The prisoner lived with me in the same house, I left the child, Dupuhoree, sleeping on a mat, near the door at the east end of my house, in charge of the prisoner, and went about one arrow's flight distant to the Monass Nuddee, to get some water, and in my absence the accident or deed was committed. No body saw the prisoner give the blow and the little child made no noise and no one heard any; about one *dund* after, I returned to my house and saw the prisoner standing and trembling all over; on seeing me he said he had murdered Dupuhoree, on which I entered the house and saw that what he had told me was true; the child was lying on her left side, the same as I had left her, her neck was cut from the right side with a *dao*, and she was dead. After seeing which, I commenced to cry aloud, on which my neighbours, Fukera, Petrah, Butassoo, Huree, Gobind, Bhyrobie and others, collected in my house, and the prisoner confessed to them that he had murdered the child, Dupuhoree, with a *dao*, and they, after seeing the body of the deceased, apprehended the prisoner, and the *dao* was taken out by one of the party covered with blood from under a *mechan* in the house, on the prisoner telling them where it was, I do not now recollect the name of the person who took out the *dao*. The prisoner had no enmity to the deceased, she was quite a child and what cause could there be for his having any? The deceased was an orphan and was brought up by me, and I know no cause for the prisoner murdering her. The prisoner never

Prisoner
convicted of
the wilful murder of a
child without
any assignable
reason, and,
there bring no
cause to doubt
his sanity,
sentenced capitally.

1854.

October 16.

Case of
GOBRAH.

showed any madness in his behaviour and was a steady man. The prisoner has been suffering since Maugh last, from a pain in his waist and stomach, but he has always retained his senses; he never smoked *ganjah*, or *bang*; he was always thought an intelligent man; he used a long time ago to smoke *ganjah*, but since his sickness he had left off doing so; on the day of the murder he had not taken any thing intoxicating, and seeing him well, and in his senses as usual, I left the child in his charge. On coming from the *ghat*, I found him in a bewildered state of mind, and trembling. The *dao* produced belongs to the prisoner; I know it, as I live with him; I am acquainted with the prisoner for a very long time, he married my daughter before the *mairs** in-

* Burmese. vaded the country, I know him from that time, he is intelligent and of good disposition; there was no one else beside the prisoner in the house; on returning from the *ghat* I saw no *dao* or any other weapon in his hand.

Question by jury.—When you went to the river-*ghat* where did you leave the prisoner and where was the *dao*?

Answer.—I left the prisoner standing in front of the door of the house in which the murder was committed; there was no *dao* in his hand then. The *dao* was in the house of the prisoner, which is facing the north, but in what particular part of it I do not know. The one mentioned is the one prisoner lives in, it is on that account that I say the *dao* was in it. The prisoner has neither wife nor children.

Questions by magistrate.—Does the prisoner ever get out of his senses on account of the disease he is labouring under?

Answer.—No, for when his sickness has been very bad and his neighbours inquired of him how he got on, he generally answered in a mild manner, and before the murder he was not known to have had any quarrel with any one.

Question.—Had the prisoner any regard for the deceased child?

Answer.—He did not appear either to love or dislike the child, but he had no ill-will towards it.

Confession of the prisoner, Gobrah, before the jury.—I killed the girl, Dupuhoree, with one blow in the neck with the *dao* produced in court.

Duqueer Chand, 1st witness for prosecution.—In the past month of Srabon, date unknown, about one or one-half *pahurs* remaining of the day, I heard the prosecutrix crying and making a noise, on which I and Petrah of the same village, her neighbours, went to her house; she told us that her grand-daughter by name, Dupuhoree, aged about four years, while asleep was murdered by the prisoner, Gobrah, who cut her throat with one blow of the *dao*, produced in court, on hearing which and seeing the prisoner standing at the entrance of the house, we questioned him about the circumstance mentioned, and he voluntarily con-

fessed that in consequence of his laboring under a disease for seven or eight months, from which he could get no relief, neither could he die, he therefore with the *dao* gave the girl, Dupuhoree, a blow on the neck and killed her, knowing that by so doing, he would be hanged by the Sahib (alias magistrate.) I know thus much.

When the prisoner murdered the girl, I was not present and I heard nothing more from either the prosecutrix or the prisoner, or any one else as to the cause of the murder. The deceased girl is the child of the prisoner's wife's sister, she has no parents, both being dead, and she lived with her grand-mother, the prosecutrix, and was supported by her and the prisoner. The prisoner loved the girl and there was no ill-feeling between him and the prosecutrix or her grand-daughter, and why the murder was committed is beyond my comprehension. The *dao* produced belongs to the prisoner, he used to take it about with him and I recognize it as the one he used. All the particulars of the murder, I heard from the prosecutrix and the prisoner, and I went and examined the corpse, in the centre of the house with a door at the east, on a mat the body of the girl was seen by me, lying on her left side, with her neck cut through more than half, from which wound she died, there was no other wound about the body.

The deceased girl, I know was not ill.

One Bistnoo Thakoor desired me to search for the *dao*, with which the murder was committed, it was found under a *mechan* by Balook and Butassoo, the *dao* was covered with blood. The *dao* produced is the one in question. After this, we apprehended the prisoner and took him to the thannah.

The prisoner was born near to my house, from that time to this he has remained there in the same village, and I have never known him to be out of his mind or mad; he used to smoke *ganjah* before and talk a great deal of nonsense; on this account some few people used to call him mad Gobrah, but in truth he is not mad. For the last eight months or so, he has been suffering from a severe pain in his abdomen and thighs, and has left off smoking *ganjah* entirely, and since this sickness of his, his mind appears to have suffered somewhat, this we judge of from his conversation, and the manner in which he remains quiet at home, and after the murder he appeared the same, but not mad or intoxicated, his eyes were however quite red and blood-shot. The prisoner on his disease becoming violent used never to get out of his senses, but he used to cry out from pain,—I know this from living near to him and from mutual visits. He used never to get into a passion or excited from the disease he was laboring under, and there was no cause that he should become so.

I saw the prisoner standing in front of his house with his eyes red, and trembling all over, I forgot in my deposition before the

1854.

October 16.
Case of
Gobrah.

1854.
October 16.
Case of
GOBRAH.

magistrate to mention what I had heard from the prisoner as being the cause for murdering the girl, Dupuhoree, what I have now stated is true, I forgot to state before the magistrate that his mind seemed to be affected; this is true.

I have seen the brothers and relations of the prisoner, but they none of them were mad, except that his mother was subject to fits.

Petrah, 2nd witness for prosecution.—In the month of Srawan, I do not recollect the date, about one *pahur* of the day remaining, hearing the prosecutrix crying and making a noise, I went to her, when she said that Gobrah had killed Dupuhoree with a *dao*, Gobrah was then standing in the *aungna*, court-yard of the house, I questioned him on the subject, and he voluntarily confessed that he had committed the murder and the Sâhib will hang me for it, and he assigned no cause for the perpetration of the deed; the prosecutrix could not account for his committing the murder. I saw the corpse of the deceased, Dupuhoree, in the arms of the prosecutrix in her house; the neck on the right side was nearly severed from the body by apparently a wound of a *dao*, and there was no other wound on the body and she died from that wound, the age of the deceased was about three years, she was not sickly, she is the daughter of prisoner's wife's sister, being an orphan, she lived with the prosecutrix, her grandmother, in the prisoner's house. The prisoner had no little affection for the deceased, it is beyond comprehension why he murdered her, the prisoner did not tell me with what weapon he had committed the murder, and I did not ask him. Before I arrived, the near neighbors, who had come, he told them that he had committed the murder with a *dao*, and that he had placed the *dao* under the *mechan* in his house, and the *dao* covered with blood was produced, I was not near them, but afterwards went and saw it, this *dao* in court is the identified one, but who it belongs to I know not. After this, we apprehended the prisoner and lodged him in the thannah. Dupuhoree, the deceased girl, was not sickly, neither was there any ill-will between the deceased or the prosecutrix or the prisoner. I know the prisoner from my youth up and reside in the same village, I never saw the prisoner mad, or in a bad state of mind, he took *ganjah* and for six or seven months, the prisoner had a complaint in the thighs and abdomen, which became worse if he took *ganjah*, and on that account, he had wholly given it up. I know not that he took *ganjah* on the day of the murder, I saw the prisoner after the murder and he did not look like one who had taken any intoxicating drug, he was quite collected; when he was well, he was sprightly and passed his time in trade, and from the time of his sickness his intellect was impaired, that is, he sat in his house and merely said, what has happened? where shall I go in a sick state? thus he prated. The *dao* was not pro-

duced before me at first, having afterwards gone there what I heard from others I related. After the murder, the prisoner appeared terrified and his eyes were red and his body trembled. I did not constantly see the prisoner in his sickness. The prisoner always staid at home, sometimes I saw him. I never saw the prisoner insensible in his sickness, neither have I heard that he was, merely in his sickness, he cried out with pain, what has happened? where shall I go? he shewed no great anger.

I have not seen prisoner's father and mother, they died before I was born, but he had a brother Hera, who died, and his sister is still alive, and I know that his relatives were none of them mad.

Battasoo, 3rd witness for prosecution.—In the month of Srabon, I do not recollect the date, about one *pahur* of the day remaining, hearing the prosecutrix crying and making a noise in her house, I went there, when the prisoner voluntarily, and at his own desire, told me that with one blow of a *dao* on the neck of the girl, Dupuhoree by name aged four years, while she was sleeping, he killed her, and he told me that the *dao* in question was under a *mechan* in the house, in which the murder was committed, and on searching for which, I found the *dao*, now produced, covered with blood, that *dao* belongs to the prisoner, I recognised it, as I have always seen it; when the prisoner confessed the crime he had committed, he also told me that the disease, from which he was suffering, had not left him, and now that I have murdered Dupuhoree, take and make me over to the Sahib, whatever is to happen to me let him do; after this, the people of the village apprehended the prisoner, and took him to the thannah. There was no ill-feeling between the prisoner and the deceased or the prosecutrix; Dupuhoree is an orphan, in consequence the prosecutrix, who is her grandmother, with the prisoner in his house, supported the deceased. The prisoner had a regard for the girl, Dupuhoree, and it is surprising that this crime was committed by the prisoner. On asking the prosecutrix, she could assign no reason why the murder was committed; the wound on Dupuhoree's neck, which was inflicted by a *dao*, I went and examined; her neck was cut on the right side more than half, and she must have died instantly, there was no other wound about her body and the deceased, Dupuhoree, was not in any way ill.

In the centre of the house with a door on the east, I saw the body of the deceased lying with her head to the east on her left side, in the manner she was sleeping, and wounded in the manner stated. I know the prisoner from his birth, as we live in the same village, the prisoner is not mad, neither is he unsound in mind, he used in his senses to live by trading, he was addicted before to *ganjah*, but for the past six or seven months, the prisoner has had a disease and he has entirely left off smoking

1854.

October 16.
Case of
GOSAM.

1854.

October 16.

Case of
GOBRAH.

ganjah, and on questioning the prisoner, I heard from him that on account of his disease his body is weak, and by taking *ganjah* he becomes unsound in mind, and therefore he left it off. I do not know whether he had taken any *ganjah* on the day of the murder. After the murder, when I saw the prisoner, he did not appear to me to be out of his mind, or intoxicated, from fear he was trembling, I know the prisoner to be in the habit of speaking to himself, without any object in so doing, since he has been afflicted with the disease he is laboring under, but he used not to get out of temper much, and frequently said he did not know what would happen or where he would go, and used to cry.

Question.—In your deposition before the magistrate, you say that there was no cause for the murder, and that you heard nothing either from the prosecutrix or prisoner as to the cause of the murder, and you say that because the prisoner did not get well, he murdered the deceased, saying whatever the Sahib may do he will do, what is the cause of this?

Answer.—It was from forgetfulness I did not mention the latter before, what I have now said is true.

Question.—In your deposition before the magistrate, you say that for two or three months the prisoner has been ailing, and now you say six or seven months, what is the cause of this difference?

Answer.—I may have said so from forgetfulness, what I now say is true.

Question by medical officer.—From the time the prisoner had been ailing, did you see him daily?

Answer.—I saw him almost every other day.

Question.—On account of his disease would the prisoner get out of his senses?

Answer.—No, he never used to get entirely out of his mind, but when his disease used to get very bad, he used to become quite weak.

The prisoner's father and mother died before I was born; one of his brothers, by name Hera, died in my presence, he has a sister, who is still living; both his brother and sister were of sound mind, they were neither of them mad.

Horee, 4th witness for prosecution.—In this month, I do not recollect the date, about one *pahur* remaining of the day, hearing the prosecutrix making a noise I went to her house and heard from her, that her grand-daughter about four years of age by name Dupuhoree was murdered by the prisoner, Gobrah Jallo, by cutting her neck with a *dao*, I also saw the prisoner there and on asking him, he voluntarily confessed that he had murdered the girl, Dupuhoree, but why he had done so I cannot say; the deceased Dupuhoree, has no parents or relation, the prosecutrix being her grandmother, she used to live with her

and was supported by her, but whether the prisoner had any affection for the girl or not, I cannot say, there was no ill-feeling between the prisoner and the deceased or the prosecutrix and why he killed the deceased I do not know. I do not know to whom the *dao* produced belongs, and I do not recognize it; I saw the wound on the corpse examined, the neck was cut on the right side with a *dao* from which wound the deceased died instantly, besides this there was no other wound inflicted and the deceased was not ailing.

The prisoner is my mother's sister's son or cousin, and I have known him for a long time. The prisoner, I have known as always having a good temper, and he did not appear to be out of his mind. About six or seven months ago, the prisoner was afflicted with a disease, since which time he did not go out of his house, and never went anywhere; he used to remain at home all day speaking to himself on account of his disease, which affected his mind. We live in the same place, therefore I know this. The village people used to call the prisoner Gobrah *pāgul*, or mad Gobrah, the prisoner used to get out of temper before and smoke *ganjah*, and the people used in joke to call him mad Gobrah, in reality he is not mad. I did not see the prisoner commit the murder, after it was committed I saw the prisoner, he did not then appear intoxicated, but from fear was trembling, when the prisoner fell sick, he entirely left off smoking *ganjah*. At the time of the murder, I do not know whether he had smoked any or not.

By mistake I mentioned in my deposition in the foudary before the magistrate that the prisoner was ill for about one year. What I have now stated of his being sick for six or seven months is correct.

Medical officer's question.—Does the prisoner lose his senses on account of his sickness?

Answer.—No, he never loses his senses, but whenever his disease becomes worse, he then talks nonsense.

After the prisoner fell sick, I used to see him after every one or two days, but not every day.

The parents of the prisoner died when I was a child, and I know nothing of them, he has a sister living, she is a good sort of a person and is not mad, he had also a brother who was not mad, he died in my presence.

Bishtodeb, 5th witness for prosecution.—I know the prisoner ever since he was five or six years of age, and I always lived in the same village with the prisoner. The prisoner was never known to be mad or out of his mind, he used to live by trading; about six or seven months ago he became ill of a disease, from that time even he did not appear to be mad, or out of his senses, and in his habits he did not appear to be singular, but on account of his disease he was unable to go about, he used always

1854.

October 16.

Case of
GOBRAH.

1854.
October 16.
Case of
Gobrah.

to stop at home. The prisoner used to take *ganjah*, but since his illness he entirely left off taking it, I used generally to see the prisoner after every ten or fifteen days, on going to his house, he used always to complain to me, saying "what disease have I been afflicted with, it were better if God took me away, for I cannot bear such pain any more," besides this, I never saw the prisoner shew any signs of having lost his senses.

The prisoner never got out of his senses on account of his disease, I never saw him even once out of his mind.

I do not know whether owing to his sickness he became violent in temper.

I have known the parents of the prisoner, the father of the prisoner used to be called mad Caoolah, but why they used to call him so, I do not know, he was not in reality mad. The prisoner had no brother, he has a sister living who is sound in mind.

Khonaram, 6th witness for prosecution.—I know the prisoner, Gobrah, for fifteen or sixteen years, we have lived in the same place, the prisoner is neither mad, nor out of his mind, he lived by trading, for six or seven months he has been afflicted with a disease which has made him very weak, and cannot go from place to place, he remains always in his own house.

After his being attacked with the disease, I saw him twice, and he appeared to me to have his intellect impaired in a great degree to what he was before, and his body had become very thin, and he spoke unintelligibly.

I never saw the parents of the prisoner, he had a brother who is dead, he has a sister living, who is in sound mind and not mad.

The prisoner never gets senseless on account of his disease, whenever I saw him, I saw him in his senses.

Horanund, 7th witness for prosecution.—I know the prisoner, Gobrah, from childhood, we have lived in the same place, and I know him, he is not mad, nor is his intellect affected, he lived by trading, about six or seven months since he became ill, and has always remained at home, never going out. In talking with him, I do not know whether his intellect was less than what it was before, and he does not appear to have lost any of his senses.

Since the prisoner's sickness, I have seen the prisoner every five or six days, and I do not know whether he has ever lost his senses from his sickness. I never saw the parents of the prisoner, I saw the prisoner's brother and sister, they were not mad.

Kunteram, 8th witness for prosecution.—I know the prisoner, Gobrah, we both live in the same place, and from his childhood I have seen him, the prisoner is not mad, nor has he lost his intellectual faculties, he lived by trading; about six months ago,

he became ill of a disease and had left off going about from place to place, and I do not know whether on account of his illness he has lost his senses in any way, and how can I say so, he used to cry out *bapra, mara*, what is the matter, where shall I go, and in such manner he used to remain.

I never knew the prisoner to have lost his senses, but his intellect appeared to be affected, since his illness I have seen him sometimes every day, and at other times after every two or four days, he never appeared violent in temper.

I have seen the parents of the prisoner, they were not mad, but his mother was subject to fits, she is dead. The prisoner has a sister living, who is a good kind of a person and is not mad.

Meelun Bagoo and Khoorshed.—Witnesses to confessions before the magistrate, and in the thannah.

Confession of prisoner at the thannah.—I have murdered Dupuhoree, the grand-daughter of Dhunoo Bewah of Puchania.

I murdered her with my *dao* now before me, by giving her a stroke on the right side of her neck.

Yesterday in the evening, the prosecutrix, Dhunoo Bewah, while the girl, Dupuhoree, was asleep went to the river *ghat* to fetch some water, and on going she told me, that Dupuhoree had gone to sleep in the house in the east room and desired me to look after her, and that she was going to fetch water, saying this, after she had gone out of the house, it entered my mind to murder the girl, I therefore with the *dao*, now before me, while Dupuhoree was asleep gave her a blow on the right side of her neck and killed her. The prisoner afterwards stated, that with a view to kill her at once, he gave her the blow inflicted.

The *dao* produced is known to be mine by Butassoo, Bhryobie and Gobind of the same village as myself.

I was never taken up for any crime before.

I have no witnesses or plea to make in defence.

There was no one saw me kill the girl, Dupuhoree, and there was no one there.

Confessions of the prisoner Gobrah before the assistant magistrate.—Dhunoo Bewah having stated that you have murdered her grand-daughter, Dupuhoree, with a *dao*, what have you to say in reply.

Yes, yesterday about one *pakur* remaining of the day, I murdered the deceased girl, Dupuhoree, by inflicting a blow with the *dao*, now before me, on her neck, while she was asleep.

I confess doing so voluntarily and have no plea to make. The prosecutrix, Dhunoo Bewah, is my mother-in-law, and the murdered girl is the daughter of my wife's sister; since the death of the girl's mother, my mother-in-law had supported her, she consequently was in her house, my mother-in-law, while the girl was asleep, left her in my charge, and went out either to some

1854.

October 16.

Case of
GOBRAH.

1854.

October 16.
Case of
GOBRAH.

of her neighbours or elsewhere, and without any cause whatever it entered my mind to kill her, and I did so.

Confession of prisoner before the jury.—I have no plea to offer or witnesses to adduce in defence, it entered my mind like a fool to murder the girl, Dupuhoree, and I did so.

Opinion of jury.—Although it appears from the papers of the case that the crime was committed by the prisoner, while suffering from disease, yet in such a case, the crime cannot be designated homicide, because from the confession of the prisoner and evidence of witnesses, the crime charged is fully proved, we are therefore of opinion that the prisoner is guilty of wilful murder.

Opinion of officiating deputy commissioner of Assam.—In the afternoon of the 21st July, the prosecutrix, Dhunoo widow, left her grand-daughter, Dupuhoree, about three years of age, asleep in her house, under the charge of her son-in-law, the prisoner, Gobrah, and went to fetch water from the Monass river, a short distance from the house; on returning home in about a *dund* or twenty-four minutes, she saw the prisoner, when he told her that he had murdered her grand-daughter and he appeared terrified or trembling at what he had done. On seeing the child's throat cut, she cried and made a noise, and her near neighbours came to her, and the prisoner confessed at once that he had cut the child's throat with a *dao*. There were no eye-witnesses to the deed, the *dao* with which the murder was committed was discovered under a *mechan* or bench in the house, covered with blood, and the prisoner was conveyed to the thannah.

At the thannah and before the assistant magistrate and jury, the prisoner has fully confessed his guilt, but he has assigned no reason in his confession for having committed the murder. No. 1, witness Fuqueer Chand, states in his evidence that on hearing of the murder, he, with others, went to the prosecutrix's house and questioned the prisoner, who voluntarily confessed that he had been suffering from a complaint for seven or eight months and could get no relief, neither could he die, he therefore committed the murder, knowing that the magistrate would hang him for it. No. 2, witness Pethra, says the prisoner voluntarily confessed that he committed the murder, and that the Sahib would hang him for it, but he assigned no cause for the deed. No. 3, Buttasoo, who also went to the prisoner's house immediately the murder was committed, saw the bloody *dao*, and the prisoner then told him he was still suffering from his complaint, that he had murdered the child Dupuhoree, take me therefore and make me over to the Sahib (alias the magistrate) whatever is to happen to me let him do.

The medical officer, Mr. G. Ridsdale, examined the body of the child Dupuhoree, and states he found "an incision two inches in length on the right side of the neck which had divided

the common carotid artery, vertebra and spinal marrow, there were no other injuries visible."

The wound was sufficient to cause death, and it might have been committed with the *dao* shewn in court.

The deceased child had no internal disease, all the organs were perfectly healthy.

The prisoner has been under the care of the medical officer thirteen or fourteen days, he saw him daily and states, "his conduct indicated no signs of mental derangement since he had been under the care of the medical officer; on first visiting him he was somewhat excited and complained of a peculiar sensation in his body, subsequently he has been very quiet, and shewn no indications of insanity, he (the prisoner) appears to be in good health, I have examined him minutely, and discovered nothing to indicate any disease, I do not think he could have suffered from any disease, that would have caused temporary madness and yet left him in the state of health I found him in. I do not think he was absolutely mad, he may have been seized with a sudden impulse of passion and acted under it, and over which he had no control, for although I have not been able to discover that he is laboring under any disease, yet if the witnesses are to be believed he has for the last six months been suffering from illness, and on any occasion of the pain appeared reckless of what might become of him."

Nos. 1, 2 and 3, witnesses, depose to the prisoner's having been afflicted with some complaint, it appears, in the abdomen for six or seven months past, and that before he fell sick, he was addicted to smoking *ganjah*, but since the sickness he had given it up, they knew him well for years past and yet in speaking of his intellect, they consider him a sensible man and have never seen him mad or intoxicated, and though he may have been called by some few people "mad Gobrah," yet he is not mad.

Nos. 4, 5, 6, 7 and 8, witnesses, all depose to the prisoner's sanity excepting intervals of sickness within the last six or seven months, when he would cry out he could not endure the pain, and that it were better if God took him away, and other expressions, *bapra, mara*, what is the matter, where shall I go. Before the assistant magistrate, three witnesses depose to his voluntary confession of having committed the murder, and the prisoner has urged nothing in extenuation of his conduct before the jury. The verdict of the jury therefore is, that the prisoner is guilty of wilful murder. The magistrate, however, is of opinion that ill health must have disordered a brain not perhaps originally strong, and that there must be grounds for his having been called "Gobrah, the fool," which shews there must have been something strange about him, although what exactly, we don't know, and that therefore there are reasonable grounds for

1834.

October 16.

Case of
GOBRAH.

1854. doubting the perfect sanity of the prisoner, although the evidence does not establish his being mad.

October 16.

Case of
GOBRAH.

In this reasoning, I cannot concur, a cold-blooded barbarous murder has been committed by the prisoner on a poor innocent helpless child of three years of age; whether the murder was committed from superstition to effect his own recovery by appeasing the goddess, Kalee, or, whether the prisoner, who is said to have given up *ganjah* since his illness, committed the deed when under the effects of *ganjah*, as his eyes were blood shot, and he appeared terrified at what he had done, we cannot say, but in either case it is no extenuation of the crime, and after the strong evidence given by the medical officer of the prisoner's perfect sanity after careful enquiry and examination for many days, and which has been fully confirmed by the prosecutrix and eight witnesses who knew the prisoner for years past, I cannot see any extenuating circumstance to render the prisoner deserving of mercy, I therefore recommend that the prisoner be sentenced to suffer death by being hanged.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes). We concur entirely in the view taken of this case by the officiating deputy commissioner. No circumstances of extenuation present themselves in connection with the perpetration of the cruel murder, of which the prisoner has been proved guilty. We see no reason whatever to doubt the prisoner's perfect sanity at the time he committed the deed; indeed the evidence of his relations and neighbours is conclusive on this point, shewing only that the prisoner at times suffered great pain from some internal disease. The prisoner has not himself disclosed the motive which induced him to take the life of an innocent and unoffending child, nor can the witnesses speak to that point, but this is immaterial; the facts before us deduced from the evidence, fully establish the prisoner's guilt, and in concurrence with the officiating deputy commissioner, we sentence him to suffer death.

PRESENT:

J. DUNBAR, AND H. T. RAIKES, Esqs., *Judges.*

GOVERNMENT,

versus

GUNGARAM LOHAR.

West
Burdwan.

1854.

October 16.

Case of
GUNGARAM
LOHAR.

Prisoner convicted of perjury, in having stated that he was not servant to a certain person, and that he had never given evidence on the part of that person, acquitted in appeal.

CRIME CHARGED.—Perjury in having in the case No. 2, under Regulation V. of 1812, of Ramchand Surma plaintiff, on the 7th July, 1854, or 24th Assar 1261, B. S., deposed under a solemn declaration, taken instead of an oath before the assistant deputy collector of Bancoorah that “I am not servant of Rammohun, and never gave evidence on the part of Rammohun,” such deposition being false, and having been intentionally and deliberately made, on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. F. Tucker, deputy collector of Bancoorah.

Tried before Mr. Pierce Taylor, sessions judge of west Burdwan, on the 12th August, 1854.

Remarks by the sessions judge.—One Ramchand Surma, calling himself tenant of a portion of the Dewutter lands of one Rammohun Chand, who is the Serishtadar of the P. S. Ameen, brought a criminal action against Roopchand Ghose and others (inclusive of Heraloll Surma, Oodye Chand Surma and Bankoo Surma, witnesses Nos. 2, 4 and 5, in this case), for plundering crops said to have been sown by him on his *jummaee* lands. In the course of the investigation, the joint-magistrate found, from the statements of the defendants, &c. that the case was one of distraint, made by Roopchand Ghose, on the crops of his alleged ryuts, Gunesh Chunder Biswas and others, and thereupon, dismissed the case under construction No. 615.

Ramchand Surma then resorted to a suit for damages, in the deputy collector's court, in which the prisoner Gungaram Lohar, was examined, as a witness on his part. The points involved in his alleged perjured statements, cited in the charge were so far material to the issue of the case, that the facts of his being a servant of Rammohun Chand and having deposed on his part before would, if at once acknowledged, have militated against the credibility of his evidence. The prisoner pleaded not guilty, denying that he had made the statements imputed to him.

His deposition in Ramchand Surma's case, which was given before the assistant, with full powers of deputy collector was by some oversight, left unsigned by the prisoner, but the witnesses, Nacource Chaprasee and Sreeram Singh, Mohurri, Nos. 6 and

1854.
October 16.
Case of
GUNGARAM
LOHAR.

7, fully proved it, as well as the fact of its having been made on solemn declaration. The witnesses from 1 to 5, deposed to their knowledge of the prisoner being a servant of Rammohun Chand, and to his having collected rent and kept cows, &c. for that individual, but none of them could say that they had actually seen him receive salary for his services. The depositions formerly given by him in the Regulation VII. cases, Nos. 649 and 613 of 1852, were fully and distinctly proven by the evidence of the deputy collector's mohurrir, Gunga Hurree Chatterjea, who wrote them, and Samachurn Chowdry, who instituted the said cases on the part of Rammohun Chand, as his *karperdaz*. These depositions bore the signature of the prisoner, and the said witnesses proved that he had made declaration, instead of oath.

The prisoner's defence was, that he was not a servant of Rammohun Chand, and with regard to the rest of the charge, that he was old and foolish, and did not know what he had said.

His witnesses deposed that he was not a servant of Rammohun Chand.

The law officer considered the perjury, in the first statement cited in the charge, not proven, but convicted him of *buzunighalib*, or on violent presumption of perjury in the second, and declared him liable to *tazeer*.

My opinion was coincident, except that I considered the proof of perjury in the second statement, full and legal, and, as I saw no extenuating circumstances and severe punishment for perjury is required here, I convicted the prisoner and sentenced him as noted.

I did not consider the absence of the prisoner's signature, in his deposition, upon which the charge was based, of any great consequence, as the evidence of his having given it was full and trustworthy, besides which the several sheets thereof bore the *mokabilah* of the mokhtar of Ramchand Surma's antagonists.

Sentence passed by the lower court.—To three (3) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) The prisoner was charged with wilful and deliberate perjury on a point material to the issue in having stated as follows: "I am not a servant of Rammohun, and have not given evidence on the part of Rammohun."

The sessions judge, in concurrence with the *futwa* of the law officer, finds that the prisoner spoke no untruth in stating himself not to be a servant of Rammohun, but in accordance with the *futwa*, convicts him of swearing falsely that he never gave evidence on the part of Rammohun.

We observe that the prisoner was examined before the assistant deputy collector on the 7th July, 1854, and there deposed that he is not a servant of Rammohun, and never gave evidence on the part of Rammohun.

The questions eliciting these answers are not on record, but it is fairly presumable that they were to the same general purport as the answers, and that the particular instances in which the prisoner had previously given evidence on the part of Rammohun were not specifically alluded to, nor any *direct* and *unequivocal* reply in reference thereto required from him. Such being the case, we are of opinion that the offence of wilful and deliberate perjury is not made out against the prisoner. The instances, in which he was known or supposed to have given evidence on the part of Rammohun, not being of very recent date should have been brought to his notice and the necessary question directly put, concealment of the fact by a false answer would then have fairly laid him open to the charge of wilful and deliberate perjury;—as it was, the prisoner when made aware of his former depositions, at once admitted them, and excused himself on the plea of forgetfulness. We acquit the prisoner of the charge, and direct his release.

1854.

October 16.

CASE OF
GUNGARAM
LOHAR.

PRESENT :

A. DICK, AND B. J. COLVIN, Esqs., *Judges*.

GOVERNMENT AND MOTEEOOLLAH,

versus

MUSST. SHEETAH.

CRIME CHARGED.—Wilful murder of Shookoor Mahomed.

Committing Officer.—Mr. C. Jenkins, assistant magistrate of Backergunge.

Backergunge.

1854.

October 16.

CASE OF
MUSUMMUT
SHEETAH.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 7th September, 1854.

Remarks by the sessions judge.—The deceased was asleep inside his own house, when his wife took that opportunity at about 3 o'clock in the evening, to assault him with a long handled *dao*, and the wounds she inflicted on his head were so serious that he expired within a very short time.

Although the prisoner was convicted of murdering her husband, she was, with reference to her youth, and the treatment she had received from him, sentenced only to fourteen years' imprisonment with labor.

The father* of the deceased, who slept in the *verandah* of the same house, was awoke up by hearing his son's groans and he saw the prisoner at the same time make her exit from the door.

* Moteeoolah.

† Witness No. 1, Buderoodin.

‡ Witness No. 11, Amamedin

" " 12, Doollub

" " Chowkeedar.

" " 13, Iktear

" " Khan.

" " 14, Roop-

" " dhun Chowkeedar.

" " 15, Saduck.

A neighbour† saw the prisoner quit the house, under circumstances which leave no doubt that she committed the deed.

Other neighbours,‡ arrived and before them the prisoner confessed the crime; they saw the wounds, four in number, and one of the two on the head penetrated through and through the skull into the brain.

1854.

October 16.

Case of
MUSUMMUT
SHEETAH.

The prisoner confessed her guilt at every stage and pleads guilty before me. Her defence is, that she was greatly ill-used by her husband, that she had a promise of marriage by one Borandee, who vowed if they were ever united that he would treat her with every kindness, and that influenced partly by revenge and partly from a desire to better herself, she committed the fatal deed.

The law officer finds her guilty of wilful murder, but declares *kissas* barred owing to her tender age.

Her guilt is both clear and great, the murder was done in cold blood and has nothing to palliate it. The only consideration is as to the punishment suitable, where the criminal is one so young in years as the prisoner is. She calls herself ten years old, but I should say that she is not less than twelve. Her appearance is not that of a child, and in intellect her deportment, and the way she answered the questions put to her, show her to be not inferior in understanding to the generality of grown up women in this country,—while the skill, the manner, and resolution exhibited by her in the commission of the fatal deed, could not have been surpassed. It is however right to say that those who are capable of speaking on the subject, allow that the monthly indications of attained womanhood have not yet appeared.

All admit that her husband was not kind to her, that he used to chastise her for domestic duties left undone, or done improperly, without duly considering that errors of the unfortunate offender were the faults of inexperience. There is not wanting evidence to show that on the fatal day, the poor girl received some chastisement from her husband. The intolerable burthen of this oft-repeated and unmerited ill-treatment, the hopelessness of ever getting quit of it, added to the inducement afforded by the promise of Borandee that he would marry her, if any thing happened to her husband, with perhaps a direct counsel that it was easily in her power to secure this result, betrayed her, it may be presumed, into the commission of the crime. These motives, which would not suffice in most cases, may, I think, be allowed their weight, acting on a mind so young as that of the prisoner. Agreeing then with the law officer in the propriety of not awarding a capital sentence, I would recommend that the prisoner be sentenced to imprisonment for life.

I would observe that the body was not sent in for examination by the medical officer as the cause of death was undoubted.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.)

Mr. A. Dick.—In estimating the value of a confession in this country, and judging of its truth, it is absolutely necessary to separate what portion is corroborated by facts otherwise divulged, or proved, from what is wholly unsupported by any

evidence. Such a test must be applied to the confessions of the prisoner. 1854.

October 16.
Case of
MUSUMMUT
SHEETAH.

There is not a particle of evidence of any kind to shew, or even cause suspicion, that an adulterous intercourse ever was carried on between the prisoner and either Gopal or Borandee. Neither the father of the deceased, nor any of the neighbours ever suspected it, or heard of it. The ill-treatment, however, of the prisoner by the deceased and his constant tyranny, were notorious. There can therefore remain little doubt, that the desperate conduct of the prisoner was caused by the helpless state of misery to which the murdered husband had reduced the wife, his murderess. The prisoner though older in appearance than really in years, had not, according to the best evidence on record, attained womanhood: and her mind was manifestly in a very immature state; for she has stated as facts, things contradictory in themselves and utterly unsupported by any evidence. But she has throughout declared, she intended to kill her husband for his cruelty to her. She must therefore be convicted of murder. In consideration however of her youth, and the distressing and irritating nature of the aggravation, which induced her to commit the dreadful deed, I would sentence her to fourteen years' imprisonment with labor suited to her sex.

I would observe that the guilt of the prisoner in the *intention* is far more heinous than that of the prisoner Mathur Bewa. See Nizamut Adawlut Reports, 20th July, 1853.

Mr. B. J. Colvin.—I concur in the sentence proposed by Mr. Dick, as it clearly appears from the evidence that the prisoner was subjected to much cruelty and ill-treatment by her husband, and there is no proof of her having had any intrigue with Borandee or Gopal, regarding the last of whom the sessions judge has made no mention in his report. Had such proof existed, the act of the prisoner might have been ascribed to a desire to be rid of her husband for the sake of prosecuting her attachment, in which case her youth could not have been taken into account as extenuating her guilt, but as she was driven by desperation to the commission of the crime, the circumstances of the case with reference to her tender age do not even, adverting to the difference between them and those of the one cited by Mr. Dick as pointed out by him, call for a severer sentence than fourteen years' imprisonment with labor.

N. B. The sessions judge is referred to the Court's order on the case of Chytunno Christian and another, disposed of on the 11th Oct., directing his attention to paragraph 6, of Circular Order No. 54, dated 16th July, 1830, the instructions of which have been neglected in this case also.

PRESENT :

A. DICK, AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT,

versus

DWARKANATH ROY.

24-Pergunnahs.

1854.

October 17.

Case of
DWARKA-
NATH ROY.

The prisoner's appeal was rejected as the crime of perjury was clearly proved against him.

CRIME CHARGED.—1st count, perjury, in having, on the 31st May, 1854, deposed on solemn declaration under Act V. 1840, before the magistrate of the 24-pergunnahs, in the case of Goloke Chunder Sircar *versus* Kishtohurree Mashchuttuck, charged with plunder, that he, the said Dwarkanath Roy, defendant, had seen Kishtohurree Mashchuttuck passing along the road at Bhowanipore on a Sunday, in the early part of the month of last Chyetro (i. e. the 7th Chyetro) at 10 or 10½ o'clock in the morning. And in having again, on the above date, deposed on solemn declaration before the magistrate aforesaid, that he did not see defendant, Kishtohurree Mashchuttuck, on Sunday, the 7th Chyetro aforesaid, at 10 o'clock in the morning at Bhowanipore, but that he saw him at about two hours before sunset on that date. One of these depositions being false and both being contradictory of each other on a point material to the issue of the case; 2nd count, perjury in having on the 31st May, 1854, deposed on solemn declaration, under Act V. of 1840, before the magistrate of the 24-pergunnahs, in the case of Goloke Chunder Sircar *versus* Kishtohurree Mashchuttuck, charged with plunder, that he, the said Dwarkanath Roy, defendant, had seen Kishtohurree Mashchuttuck passing along the road at Bhowanipore on a Sunday, in the early part of the month of last Chyetro (i. e. the 7th Chyetro) at 10 or 10½ o'clock in the morning, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. H. Fergusson, magistrate of the 24-pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-pergunnahs, on the 19th July, 1854.

Remarks by the officiating additional sessions judge.—This is again a lamentable instance of the small estimation in which the sacred obligations of an oath are held by the natives of lower Bengal. The prisoner was a witness for the defence in a case of riot and plunder and deposed that he saw the person, on whose behalf he was giving evidence, on the Bhowanipore road, about 10 A. M. on a day specified. When brought up for cross-examination by the magistrate, shortly after he had deposed to the

above effect, he repudiated his former statement and asserted that he had not met the defendant at the hour abovementioned, but at about 5 P. M. or towards evening on that day. On being questioned as to the discordance apparent in his testimony, he admitted that he had sworn falsely in the latter instance, and had been induced to do so from the consideration that he would thereby befriend and absolve a Brahmin from punishment. The prisoner was in the employ of Government when he committed this perjury, and his object in it was to procure the release of a guilty man. Such a disregard of the principles of truth, and such a defect in the moral perception are beyond all comment. The collateral evidence, adduced for the prosecution, shows that the party alleged to have been seen by the prisoner on the Bhowani-pore road at 10 A. M. on the day of the riot, was present at that time at the scene of the outrage, aiding and abetting, some fourteen or fifteen miles off, and proves the falsehood of the prisoner's first statement. Again I punish severely, as the only means within my reach to abate the crying evil of false-swearing.

Sentence passed by the lower court.—Sentence to be imprisoned with labor and irons for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin). The prisoner is clearly guilty of perjury. He made his first statement, which he contradicted afterwards with the express purpose of screening the accused on a material point. We therefore reject his appeal.

The remarks made in the case of Dookeeram and Bullye, disposed of to-day, relative to the finding of perjury generally, when two counts distinct in their nature were charged, apply to this case also.

PRESENT:

A. DICK, AND B. J. COLVIN, Esqs., Judges.

GOVERNMENT,

versus

KHAN MAHOMED.

Rungpoor.

CRIME CHARGED.—1st count, dacoity in the house of Tepree Bebee and Sujjun Bebee, and plunder therefrom of cash and property valued at Rs. 2,634 with wounding of Burkutoollah and assault on Tepree Bebee, Ainoollah and Ghureeboollah; 2nd count, receiving and having in his possession property knowing it to have been obtained by the said dacoity with wounding, &c.

CRIME ESTABLISHED.—Dacoity with wounding.

Committing Officer.—Mr. H. L. Dampier, officiating magistrate of Rungpoor.

Tried before Mr. G. U. Yule, officiating sessions judge of Rungpoor, on the 3rd June, 1854.

1854.

October 17.

Case of
DWARKA-
NATH ROY.

1854.

October 17.

Case of
KHAN
MAHOMED.

The prisoner's appeal was rejected.

1854. *Remarks by the officiating sessions judge.*—On the night of Monday, the 27th of March, 1854, the household of Musst. Tepree were alarmed by a number of men with their faces discoloured and bound with cloth, bursting into the house beating the witnesses Nos. 1 to 4, who were sleeping there, of whom Nos. 1, 3 and 4 were then tied, but No. 2 escaped and watched the proceedings as far as possible from outside. The dacoits first broke open a chest in the *khanka* house, taking therefrom a quantity of valuable property and then entering the inner houses, seized the eldest child of Tepree and prepared to torture him by burning, if she did not show where the money was kept, she pointed out the spot where a brass pot containing 2,004 rupees was buried which the dacoits dug up and made off with, issuing from the enclosure some by the south, some by the west door. Witness No. 2, watching at the former, saw one dacoit come out some time after the rest and calling for aid rushed after him, witnesses Nos. 5, 6 and 7 who lived close by already alarmed by the noise ran immediately to help him and the dacoit stumbling in a hole a very short distance from the house was seized by the witnesses, with a bundle containing three pieces of cloth belonging to Musst. Tepree, and taken back to the house where he confessed in the presence of his captors and of witnesses Nos. 1, 3 and 4, who by this time had been released from their bonds. It is not very clear how far the other dacoits were ahead when prisoner was captured, but at all events they made no attempt at a rescue. Next morning a silver necklace was found at the spot of capture.

The prisoner confessed both at the thannah and before the magistrate, detailing at length how he had gone with many others named to commit the dacoity, how he was seized, &c. He states that he was imprisoned for one year in a case of affray, but the foudary record-keeper cannot ascertain the point. He called three witnesses to good character, but declined to have their evidence taken, alleging the witnesses whom he wanted were three others of the same names as those produced, and when requested to describe the site of their residence, he described them as being a coss from some other person's house, whose site he did not know, it was clear that he had no witnesses. I tried this case alone under Act XXIV. of 1843, and considering the charge of dacoity with wounding to be proved against the prisoner I sentenced him as mentioned.

Sentence passed by the lower court.—Seven years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin). After examining the record, we see no reason for interference with the conviction and sentence, and the prisoner has, in his petition of appeal, shewn no grounds for impugning them. We therefore reject his appeal.

PRESENT :

J. DUNBAR, AND H. T. RAIKES, Esqs., Judges.

GOVERNMENT,

versus

CHYTTUR DHOOPÉE.

Backergunge.

1854.

October 17.

Case of
CHYTTUR
DHOOPÉE.

CRIME CHARGED.—Wilful murder of Musst. Moheshurry.
Committing Officer.—Mr. H. A. R. Alexander, officiating magistrate of zillah Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 16th September, 1854.

Remarks by the sessions judge.—The first intimation given to the police of this affair was by the prisoner himself. On the night of the occurrence he presented himself at the thannah, in a state of high excitement and with his clothes smeared with blood, and informed the darogah that he had, shortly before, had a quarrel with his deceased brother's widow, and that he had with a *dao*, so injured her that he was unable to say whether she was dead or alive. It being night, and no witnesses present, the darogah did not record this confession on paper, but he started immediately with the prisoner for the scene of the occurrence, and arriving at midnight of the same day, he found the deceased unable to speak and tossing about, very restless. There were several bruises, cuts and wounds on her person. The next day he sent the woman into the station, but she did not reach it alive. The next morning the prisoner made a long and circumstantial confession, before the darogah in which he admitted that he seized a *dao*, while in the heat of a quarrel with the deceased, and severely wounded her with it.

Prisoner convicted of the wilful murder of his brother's widow, sentenced to transportation for life, owing to the absence of premeditation.

The chief witness before the darogah and before the magistrate was the prisoner's mother, but she wept so loud and was so unwilling to say anything, even in favor of her son, if she could do so, that I thought it best to dispense with her evidence.

There was, besides the mother, a neighbour,* who, being attracted to the spot in the beginning of the quarrel arrived

* Witness No. 1, Kishore Dhoopée.

just when the last blow with the *dao* was struck, he saw the prisoner make the blow, throw down the *dao* and run off.

Musst. Tarah,† also a near neighbour, saw the prisoner throw down the *dao* and run off, she

† Witness No. 7.

says in her examination before me, that she also saw a blow struck with it, but as she did not say this in her previous examination, this addition may be set down as borrowed information.

1854.

October 17.

Case of
CHUTTUR
DHOOPEE.

The medical officer,* deposes that "the body exhibited several marks of violence; there was a large bruise on the left cheek of which the skin was entirely off; she had a punctured wound above the right collar bone, and the collar bone was itself fractured." He attributes death to several combined causes, "he supposes that the shock the constitution received from the fracture of the collar bone and the bruise on the left cheek, added to her advanced pregnant condition (she was six months gone with child) together with confinement on board a boat, without proper treatment, all in their degrees combined to cause death."

The darogah's *sooruthal*, attested by the witnesses† present

† Witness No. 3, Petumber Doss.

" " 4, Gourkishore Dey.

at it, describe the injuries as much more serious than those which the medical officer observed. There was a bad wound three inches long on the back of the neck beside the punctured wound made mention of by the medical officer, and the neck was much swollen. As the woman died within thirty-two hours after the mofussil *sooruthal*, and the body was inspected by the doctor within three hours after death, I cannot easily account for the great difference between the two examinations. All the witnesses agree that the deceased never opened her mouth after she received the wounds, and considering the immediate alarming effects of them, there is every reason to think, notwithstanding the Doctor's qualified opinion, that death was the result of the violent assault made on her by the prisoner.

The prisoner denied the charge, as he did before the magistrate. His plea was an *alibi*, and he accused certain relatives of his own and others with being the authors of Moheshurry's murder, which they laid to his charge in order to screen themselves.

He denied also having ever made any mofussil confession, and he disavowed being the owner of the bloody clothes with which he was clad, when he first charged himself with the murder.

From the prisoner's confession, which has been proved by the attesting witnesses, his own account of the occurrence and what led to it, is as follows.

There had been an improper intimacy with the deceased, and a relative of the prisoner, by name Hurmohun, who lives in the same homestead. The deceased is the widow of a brother of the prisoner. Hurmohun was in Aghun last discarded by her, for the prisoner and for some time afterwards they lived on the footing of man and wife. They did not however agree, and Hurmohun and some other of the prisoner's relatives in consequence of their disagreement, persuaded the deceased to form an alliance with Kashee Dhoopee. This was strongly objected

1854.

October 17.
Case of
CHYTTUR
DHOOPEE.

to by the prisoner, and it led to frequent quarrels between him and the deceased, who notwithstanding her attachment for Kashee Dhoopee, continued to live with the prisoner. A quarrel occurred on the eventful day between the prisoner and the deceased, because the latter threatened that if the prisoner left her, as he said he would do, to get service at Cowkalee, she would follow him to the same place with Kashee Dhoopee, and support herself in the profession of a prostitute. At the same time that she said this, Kashee Dhoopee was behind the door, and on a wink given to her by him, the deceased was walking out of the house, when the prisoner laid hold of her and struck her and kicked her, she still continued to abuse him, and the prisoner being unable to restrain his anger, and seeing a *dao* stuck in a bamboo by the side of the door, he seized it and struck her a blow with it on the side of the neck which laid her prostrate.

Three witnesses* were named by the prisoner in his defence, yet it does not appear what

- * Witness No. 13, Dhuloo Mea.
- " " 14, Kishore Bar.
- " " 15, Mataboodin.

they were intended to establish. However, the first two witnesses coming into court,

the prisoner said they were not the parties he intended. The third he had examined, but so far from knowing anything in the prisoner's favor, the witness says he has been told by every one that the charge against the prisoner was a true one.

Being desirous of giving the prisoner the benefit of any evidence he might wish to call in his favor, I asked him to furnish me with any clue as to who the parties were, whom he named as his witnesses before the magistrate. The parties produced were, I fully believed, the real persons intended by the prisoner but to put it out of his power to raise any future objection on the ground of his witnesses not being called, I directed the magistrate to order the police to send in every one of the same name as that given by the prisoner who might reside in the particular place named. The darogah having reported that there were no other persons but the parties originally sent in residing in the villages named, there is no doubt that the real witnesses were the persons who first appeared, and that the prisoner repudiated them only to postpone the final sentence.

The law officer finds him guilty on violent presumption of the wilful murder, and declares him liable to *kissas*.

I agree in this conviction and considering all the circumstances of the case, and that the blow with the *dao* was struck in the heat of a quarrel and the weapon was at hand, and giving him the benefit of the doubt arising from the medical officer's opinion as to the immediate cause of death, I would recommend that the prisoner be sentenced to imprisonment for life in transportation.

1854.

October 17.

Case of
CHYTTUR
DHOOFFE.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar, and H. T. Raikes.) We concur with the sessions judge in convicting the prisoner of the crime charged. As it appears, however, that the crime was committed not by premeditation but while the prisoner was excited by the bad temper and conduct of the woman he was struggling with, when in the height of his anger he seized a *dao* which was unluckily within his reach, we consider the extreme penalty of the law need not be inflicted, and in compliance with the recommendation of the sessions judge, sentence the prisoner to imprisonment for life with hard labor in transportation. •

PRESENT:

A. DICK, AND B. J. COLVIN, Esqs., *Judges*.

GOVERNMENT

*versus*24-Pergun-
nahs.BULLYE DASS (No. 1,) AND DOOKHERAM COWRAH
(No. 2.)

1854.

October 17.

Case of
BULLYE
DASS and
another.

CRIME CHARGED.—Prisoner No. 1, 1st count, perjury in having on the 30th May, 1854, deposed on solemn declaration before the magistrate of the 24-Pergunnahs in the case of wounding with intent to murder, in which Prosono Coommar Bose was plaintiff and Mothoor Mohun and others were defendants, that he saw the prosecutor being beaten and wounded by the defendants with two small bamboo *lattees*, as also with an instrument like the one then before the court, and that he saw the assault with his own eyes; and in having again on the day above written deposed on solemn declaration before the magistrate aforesaid, that he did not see the assault committed, one of these depositions being false, and both being contradictory of each other on a point material to the issue of the case; 2nd count, perjury in having on the 30th May, 1854, deposed on solemn declaration before the magistrate of the 24-Pergunnahs in the case of wounding with intent to murder in which Prosono Coommar Bose was plaintiff and Mothoor Mohun and others were defendants, that he saw the prosecutor being beaten and wounded by the defendants with two small bamboo *lattees*, as also with an instrument like the one then before the court, and that he saw the assault with his own eyes, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case. Prisoner No. 2; 1st count, perjury in having on the 30th May, 1854, deposed on solemn declaration before the magistrate of the 24-Pergunnahs in the case of wounding

To consti-
tute the crime
of perjury,
there should
be manifest on
the part of the
witness, a de-
liberate inten-
tion to de-
ceive the
Court on a
point material
to the case.

with intent to murder in which Prosono Coomar Bose was plaintiff and Mothoor Mohun and others were defendants, that he saw the defendants commit the wounding with the two bamboo clubs, and an instrument similar to the *gooptee* or sword stick then before the court, and that he saw the assaults with his own eyes, and in having again on the day above written, deposed on solemn declaration as above before the magistrate aforesaid, that he did not see the assault committed, one of these depositions being false, and both being contradictory of each other on a point material to the issue of the case. 2nd count, perjury in having on the 30th May, 1854, deposed on solemn declaration before the magistrate of the 24-Pergunnahs in the case of wounding with intent to murder, in which Prosono Coomar Bose was plaintiff and Mothoor Mohun and others were defendants, that he saw the defendant commit the wounding with the two bamboo clubs, and an instrument similar to the *gooptee* or sword stick then before the court, and that he saw the assault with his own eyes, such depositions being false and having been intentionally and deliberately made, on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. H. Fergusson, magistrate of the 24-Pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs on the 18th July, 1854.

Remarks by the officiating additional sessions judge.—This is another instance of the deplorable prevalence of the crime of perjury in these provinces. The occasion markedly exhibits the criminal disregard the natives entertain of the obligations and importance of an oath, and discovers in all their nakedness the evils engendered by such a pernicious system on the administration of justice in our courts. The prisoners were witnesses in a case of wounding with intent to kill. They first stated that they witnessed the assault and battery, and saw the accused running away. They then deposed on the same day when cross-examined by the magistrate, that they had not witnessed the assault, and when interrogated as to the discrepancy, admitted then and there with the utmost *insouciance* that they had in the first instance deposed falsely. There is a species of effrontery in all this, and a laxity of moral principle of a highly culpable nature meriting condign punishment. As the charge details the particulars of the perjury, I have not thought it necessary to enter into a fuller account of the circumstances under which it was perpetrated. The proof against the prisoners is conclusive, and by visiting their offence with the utmost rigour of the law, I do all in my power to put down so monstrous an evil.

Sentence passed by the lower court.—To be imprisoned with labor and irons for seven (7) years each.

1854.

October 17.

Case of
BULLY'S
DASS and
another.

1854.

October 17.

Case of
BULLYE
Dass and
another.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick, and B. J. Colvin.) Although the prisoners in their cross-examination by the magistrate contradicted themselves, declaring at one time that they saw the accused actually striking the wounded man, and again that they only saw the accused running off, still such contradictions do not appear to have originated in any desire to screen the accused, or deliberately to tell falsehoods. To constitute the crime of perjury and render a witness obnoxious to punishment, there should be manifest on the part of the witness, a deliberate intention to deceive the court on a point material in the case. The evidence of the prisoners to having heard the cries of murder, and on repairing to the spot, seeing the accused running off from the spot where they, on going up, found the wounded man, was fully sufficient to convict the accused of the crime. Therefore, the subsequent denial of the prisoners that they saw the blows actually struck, could not have originated in any desire to screen the accused. We therefore acquit the prisoners of deliberate perjury and order their release.

The sessions judge has omitted to specify on which of the two counts, he convicted the prisoners of perjury. The first count constitutes, perjury by contradiction. The second, perjury by utterance of what is false. The proof of the last must depend on extraneous evidence, establishing the fact of falsehood. The deposition itself proves the first.

PRESENT:

A. DICK, AND B. J. COLVIN, Esqs., *Judges.*

24. Pergun-
nahs.

GOVERNMENT

1854.

versus

October 17.

Case of
BAHADOOR
SHEIKH and
RAMDHONE
MOOKHOPADIA.

BAHADOOR SHEIKH (No. 1, APPELLANT) RAMDHONE MOOKHOPADIA (No. 2.)

The appeal of
the prisoner
convicted of
perjury was
rejected.

CRIME CHARGED.—No. 1, 1st count, perjury in having on the 16th and 19th August, 1853, deposed on solemn declaration, under Act V. of 1840, before the magistrate of the 24-pergunnahs, in the case of Sreenath Bose versus Ram Chatterjia and others, charged with riot and plunder of a cutchery; that Ram Chatterjia and others attacked the cutchery at night, and ordered the riot and plundering; that the said Ram stood about ten or twelve cubits east of the cutchery, and gave orders and that he (prisoner) had always known the persons he had named

(Ram Chatterjia being one) and in having again on the 9th of March, 1854, before the officiating magistrate of the 24-pergunnahs deposed on solemn declaration under Act V. of 1840, that he was a stranger, and had only been three days at Casba; that he did not know Ram Chatterjia; that he had only seen Ram Chatterjia one day; that he could not tell where any one was at the time of the occurrence; that if he were now to see Ram, he could not recognize him; and that the prisoner Ram Chatterjia (then present) is not the accused party, one or other of such depositions being false, and they being contradictory of each other on a point material to the issue of the case. 2nd count, perjury in having on the 9th March, 1854, deposed on solemn declaration under Act V. of 1840, before the officiating magistrate of 24-pergunnahs, that he was a stranger, and had only been three days at Casba; that he did not know Ram Chatterjia; that he had only seen Ram Chatterjia one day; that he could not tell where any one was at the time of the occurrence; that if he were now to see Ram, he could not recognize him; and that the prisoner Ram Chatterjia (then present) is not the accused party, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case. No. 2, 1st count, perjury in having on the 16th and 19th August, 1853 deposed on solemn declaration under Act V. 1840, before the magistrate of 24-pergunnahs in the case of Sreenath Bose versus Ram Chatterjia and others (charged with riot and plunder of a cutchery) that Ram Chatterjia and others ordered the riot and plundering; that the same Ram Chatterjia stood under a mango tree before the cutchery and gave orders; that he had known the persons he had named (Ram Chatterjia being one) for about three or four years; and in having again on the 9th March, 1854, before the officiating magistrate of 24-pergunnahs deposed on solemn declaration under Act V. of 1840, that he had seen Ram Chatterjia once only on the day of the occurrence; that it was long ago, and if he saw him now he could not recognize him; and that he is unable to state whether the defendant Ram (then present), was, or was not, the person he had formerly named. One or other of such depositions being false, and they being contradictory of each other on a point material to the issue of the case. 2nd count, perjury in having, on the 9th March, 1854, deposed on solemn declaration under Act V. of 1840, before the officiating magistrate of 24-pergunnahs, that he had seen Ram Chatterjia once only on the day of the occurrence; that it was long ago, and if he saw him now he could not recognize him; and that he is unable to state whether the defendant Ram (then present) was, or was not, the person he had formerly named. Such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case.

1854.

October 17.

Case of
BAHADDOOR
SHEIKH and
RAMDHONE
MOOKHOPADIA.

1854.

October 17.

Case of
BAHADOOR
SHEIKH and
RAMDHONE
MOOKHAPADIA.

CRIME ESTABLISHED.—Perjury.

Committing Officer.—Mr. H. Fergusson, officiating magistrate of the 24-pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-pergunnahs, on the 15th July 1854.

Remarks by the officiating additional sessions judge.—The perjury charged is detailed in the indictment and the prisoners plead guilty. The evidence adduced against them proves the statements made by them severally on the 16th and 19th August, 1853, and 9th March 1854, and these two are contradictory of each other, and were intentionally and deliberately given under solemn declaration. In the former they stated that one Ram Chunder Chatterjia (acquitted as per statement, No. 8, of this court for the present month, case No. 5 of July 1854,) was present at an assault and plunder and aided and abetted therein by giving orders, and in the latter that they had no knowledge of the man Ram Chunder Chatterjia, could not identify him if brought before them, and that the person then and there produced (the veritable defendant Ram Chunder) was not the accused party and the individual named by them in their previous examination. The prisoners admitted guilt before the magistrate also, and their confessions are duly proved. The crime of perjury is frightfully on the increase. Hence the severity of the sentence.

Sentence passed by the lower court.—To be imprisoned with hard labor and irons for seven (7) years each.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin). The prisoner confesses throughout to having perjured himself at the instigation of others. We reject his appeal.

The same remarks regarding the distinction between the two counts, and the finding of perjury generally, apply in this case, as in the cases of Bullye and another, and of Dwarkanath Sing, disposed of this day.

PRESENT :

A. DICK AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT

versus

NUSSEEB DOOBEE (No. 12,) ROOCHEE DOOBEE (No. 13,) PURREEAG DOOBEE (No. 14,) BULDEO DOOBEE (No. 15,) AND SEW CHURN DOOBEE (No. 16).

Shahabad.

1854.

October 19.

Case of
NUSSEEB
DOOBEE and
others.

CRIME CHARGED.—Affray attended with wilful murder of Sumbhoo Doobee and wounding Nussceeb Doobee on one side, and Purreeag Doobee and Sew Churn Doobee on the other side.

CRIME ESTABLISHED.—Affray attended with culpable homicide of Sumbhoo Doobee and wounding Nussceeb Doobee on one side, and Purreeag Doobee and Sew Churn Doobee on the other side.

Committing Officer.—Mr. H. Richardson, officiating magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad on the 25th April, 1854.

Remarks by the sessions judge.—This is one of those cases of affray which are of so frequent occurrence in this district. Both parties met, a quarrel arising regarding the paddy crop, a fight ensued, and the deceased was killed by a blow of the deadly *lattee*.

The sentence passed on prisoners for affray upheld : except on one who was acquitted, the evidence against him being deemed unsatisfactory.

The facts are attested by eye-witnesses who gave their own coloring to the circumstances according to the connection with the parties or interest in the case.

Four of the men were wounded besides the unfortunate man who lost his life.

The prisoners plead not guilty and each gives in his defence, his own version of the affair. The evidence in fact supports the prosecution. The *futwa* convicts the whole of the prisoners of affray with culpable homicide and wounding, and declares them liable to '*seasut*.' Prisoner No. 13 is proved to have inflicted the blow under which the deceased fell.

Sentence passed by the lower court.—No. 14, to be imprisoned with labor in irons for seven (7) years. Nos. 12, 13, 15 and 16, each to be imprisoned with labor in irons for five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) There is sufficient evidence to prove that the prisoners Nussceeb No. 12, Purreeag No. 14, Buldeo No. 15 and Sew Churn No. 16, were at the affray and actively engaged, and the evidence is corroborated by all of them being wounded except Buldeo and by their several defences. The evidence however against Roochee No. 13, is not satisfactory, and two of the witnesses have testified that he was with them going to cut grass when they saw the affray. He is therefore acquitted and ordered to be released.

PRESENT:

A. DICK AND B. J. COLVIN, Esqs. *Judges.*

GOVERNMENT

versus

24-Pergunnahs.

1854.

MEEAJAN SHEIKH (No. 1,) CHUTOORBHOJ ROY (No. 2,) GUNGARAM BAGDY (No. 3,) AND RAMDYAL SHAHA (No. 4.)

October 20.
Case of
SHEIKH
MEEAJAN and
others.

The conviction as regards all the prisoners and the sentence against one was altered.

CRIME CHARGED.—1st count, burglariously entering the house of the prosecutor Nilcomal Mitter, and stealing therefrom property to the amount of Rs. 769-6; 2nd count, theft of property to the amount of Rs. 769-6, from the house of the prosecutor Nilcomal Mitter; 3rd count, receiving portions of the above property, knowing it to have been stolen; 4th count, privity to the above crimes.

CRIME ESTABLISHED.—Burglariously entering the shop of the prosecutor, and stealing therefrom property belonging to him.

Committing Officer.—Mr. H. Fergusson, magistrate of 24-pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-pergunnahs, on the 25th July, 1854.

Remarks by the officiating additional sessions judge.—The prosecutor resides in the suburbs of the town and was robbed on the night of the 2nd May last, of property to the amount of Rs. 769-6. The robbers effected a burglarious cutting into the house, and taking the keys out of a box by forcing it, opened a chest which contained the valuables. These they took off and accomplished the work so dexterously that the prosecutor was not aware of the theft till the morning. He apprised the police of the affair with but little prospect of recovering his lost property. Two days subsequently however he heard that some parties had been arrested in the town with stolen property. He repaired to the police office and there found part of the valuables he had lost. The parties so arrested were the prisoners Meeajan Sheikh No. 1 and Chutoorbhoj Roy No. 2. They were convicted by the Calcutta magistracy and sentenced to two months' imprisonment in the house of correction for being in possession of property, for which they could not satisfactorily account. During their incarceration, the magistrate of the 24-pergunnahs visited the house of correction, and elicited from them the whole particulars of the robbery. He recorded their confessions in due form and on the information so obtained, apprehended the other prisoners. These also made admissions of guilt to the extent of being privy to the robbery. All the prisoners are

men of notoriously bad reputation. The prisoner Meeajan has been convicted on five previous occasions, both in Calcutta and the suburbs, and appears perfectly incorrigible. The prisoners Gungaram Bagdy No. 3, Ramdyal Shaha No. 4, have been twice before convicted and sentenced, and the prisoner Chutoorbhooj was arrested with the stolen property, most probably on his return from committing the robbery. He is the constant companion of the prisoner Meeajan and always seen drinking and gambling in his company.

The prosecutor preferred his charge against the prisoners Nos. 1 and 2 as soon as they were released from the house of correction. The magistrate is deserving of much praise for the activity and judgment displayed by him in tracing this robbery, and bringing it to a successful issue.

Sentence passed by the lower court.—Prisoner No. 1 to ten years, and Nos. 2, 3 and 4 to seven years each with labor and irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The Court observe that the sessions judge has convicted all the prisoners of the burglary and theft, but there is nothing in their admissions which convicts Nos. 1, 2 and 3 of more than having property in their possession, knowing it to have been acquired by the burglary and theft, and No. 4 can only be convicted of privity to it. The Court convict them accordingly, and upholding the sentences passed upon Nos. 1, 2 and 3, sentence No. 4 to five years' imprisonment with labor and irons.

1854.

October 20.

Case of
SHYKH
MEEAJAN and
others.

PRESENT:

A. DICK AND B. J. COLVIN, Esqs., *Judges.*

Cuttack.

1854.

GOVERNMENT AND RAMPERSHAD CHOWDREE

versus

RAMCHUNDER SEHLEE (No. 3.) AND LALCHAND
PURWAR (No. 4.)

October 20.

Case of
RAMCHUNDER
SEHLEE
and another.

CRIME CHARGED.—The prisoners, Nos. 3 and 4, are charged with having, on the 30th July, 1854, corresponding with the 17th Srabun 1261, Waylayutee, stolen from the room occupied by the prosecutor, Rampershad Chowdree Imliah, Rs. 2,225 in cash, and three bags valued at one auna, altogether property to the value of Rs. 2,225-1-0. The prisoner, No. 3, is charged on a 2nd count with having in his possession Rs. 2,194, being part of the money stolen from the prosecutor, knowing that it had been so stolen on the 30th July, 1854.

One of the prisoners was acquitted for want of sufficient proof. The Court concurred with the law officer in the verdict against the other.

1854. Committing Officer.—Mr. R. P. Harrison, magistrate of Cuttack.

October 20. Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 2nd September, 1854.

Case of **RAMCHUNDER** *Remarks by the sessions judge.*—The following are the particulars of the case.
SEHLEE
and another.

Rampershad Chowdree Imliah, the joint-prosecutor with Government, stated that he lived in the same house with Lalchand Purwar, the prisoner No. 4, and Heera Lal, released by the magistrate, and at about noon on Sunday, the 30th July, he went to the bazar to make some purchases, having first locked up his money Rs. 2,225 in a box secured by two padlocks and placed it in charge of the said two persons, the first of whom, Lalchand, always kept the key of the door of the house; that on his return home, between 4 and 5 P. M., he found the door of the house closed and locked, and after waiting there a short time, Lalchand arrived and stated that he had been sent to the post office by Ramchunder Sehlee, prisoner No. 3, and on his unlocking the door of the house, he, deponent, went in and proceeded to open his box, which he found locked as he had left it, but on opening it, he discovered that the whole of his money was gone. That he then gave information at the thannah and the next morning, the darogah searched the houses of the different persons whom he suspected, but found nothing in any of them, except in the house of Ramchunder Sehlee, prisoner No. 3, in which in an old box, without a lock, on which were strewed some leaves and old gunny, was found Rs. 196, which he, deponent, claimed, but the darogah left them in charge of the prisoner, stating that they were not capable of identification, and Lalchand and Heera Lal were taken to the thannah. That while they were there, Ramchunder Sehlee took them some *pooree*, a sort of bread to eat, which strengthened the darogah's suspicion against him and he told him, deponent, to watch his movements which he did, and having observed him frequently pass to and fro between his house and cow-house, he suspected that his money might be concealed in the cow-house, and on Wednesday evening, he reported the circumstance at the thannah, when a guard was placed over the prisoner's cow-house and the rest of his premises, and on searching the cow-house the following morning, an earthen pot, containing Rs. 1,998 was found concealed in a heap of lime, which, in the first instance, Ramchunder Sehlee claimed as his own, but subsequently stated at the thannah that when he took the *pooree* to Lalchand and Heera Lal at the thannah the former told him there were Rs. 2,000 buried in the lime in his cow-house, and he in consequence concluded that the money belonged to him, deponent.

Witness No. 1, Ameer Khan jemadar.	Deposed to the finding of Rs. 196 in the open box and Rs.	1854.
„ „ 2, Mungul Singh jemadar.	1,998 in the lime in the cow- house of the prisoner No. 3, and	October 20.
„ „ 3, Chyetun Kur.	to his having claimed both sums	Case of
„ „ 8, Soobadhee Neckap.	at the time of their production	Ramchunder
„ „ 9, Basoo Naik.	as his own property, &c.	Sehlee and another.

Further deposed that Ramchunder Sehlee, the prisoner No. 3, stated at the thannah that Lalchand, the prisoner No. 4, told him, that there were Rs. 2,000 buried in the lime in his cow-house.

Deposed that they accompanied the prosecutor, Rampershad Chowdry, to his house about 4 P. M. on Sunday, the day of the theft, to get paid for a silver chain, which he had purchased from witness No. 11, and on reaching the house they found the door locked, and no one present, that shortly afterwards Lalchand, prisoner No. 4, came and unlocked the door, when Rampershad Chowdry entered the house, and discovered that his money had been stolen and told witness No. 11, that he was unable to pay him the sum due to him.

Ramchunder Sehlee, prisoner No. 3, stated before the magistrate that on the morning, after Lalchand and Heera Lal were apprehended and confined at the thannah, the darogah sent for him and told him to bring something for the said persons to eat, and that when he took them some *poorees*, Lalchand informed him that Rs. 2,000 were buried in the lime inside his cow-house, and he concluded the money belonged to the plaintiff, but he told no one, and was keeping watch over the place where the money was, when the jemadar came and placed a guard over his premises; and in the morning when the money was found, he claimed it as his, but afterwards told the above story to the darogah, that he did not know how or when the money was brought to his cow-house, and that the rupees 196 found in the box inside his house were his own. ●

Lalchand, the prisoner No. 4, stated before the magistrate that Rampershad Chowdry, the prosecutor, locked up his money in his own box in his, the prisoner's house, in his presence, and went to the bazar, and that the key of the door of the house remained with him, the prisoner; that shortly after the departure of Rampershad Chowdry, while he was sitting in the house, Ramchunder Sehlee, prisoner No. 3, called him to his shop and sent him with a letter to the post office, and on his return thence, he sat sometime at the shop of a Marwar merchant in the Baloo bazar, after which he went and delivered the receipt for the letter to Ramchunder Sehlee's nephew, and then went to

1854.

October 20.

Case of
RAMCHUNDER
SEHLEE
 and another.

his own house, where he saw Rampershad Chowdry standing with the witnesses, Nos. 10 and 11, and on Ramchunder's telling him to unlock the door he did so, and Ramchunder entered the house, unlocked his box, and discovered that his money was gone; and on his questioning him regarding the money, he said he knew nothing about it, but as Ramchunder Sehlee had sent him to the post office, he suspected him of having taken it, and told him to go and give information at the thannah and cause his house to be searched. He also stated that eight days previously, Ramchunder took the key of his door from him, and while he was inspecting it, measured it with his finger and perhaps he might have had a key made like it. He also affirmed that Ramchunder had stated that he told him the money was concealed in the lime in his cow-house, because he had in his presence informed Rampershad Chowdry that he suspected him.

Witnesses Nos. 6. Biddadthur
 Mahanty Mooktear and No. 7,
 Kirpasindhoo Mahanty Mooktear.

The confession of Ramchunder Sehlee, prisoner No. 3, before the magistrate was duly verified by the subscribing witnesses.

Before this court, both prisoners pleaded *not guilty* to the charges preferred against them.

Ramchunder Sehlee, No. 3, stated that the money found in his house and cow-shed was his own, and that the police beat him to accuse Lalchand, No. 4, and Heera Lal released by the magistrate, with having stolen the money.

Lalchand, No. 4, adhered to the statement made by him before the magistrate, and previously before the police, and the prosecutor.

The *futwa* of the law officer acquits both prisoners of the charge of theft and convicts Ramchunder Sehlee, No. 3, on his thannah and foudary confessions of having in his possession the stolen property knowing it to have been stolen, and Lalchand Purwar, the prisoner No. 4, on his examination before the magistrate of privity to the theft before the fact.

But from the above verdict, I dissent. And as the stolen property or the greater portion of it was found in the possession of Ramchunder Sehlee, the prisoner No. 3, without his being able to adduce any proof or satisfactory explanation how it came into his possession, the story about Lalchand's having informed him that the money was in his cow-house at the time he took him the *pooree* being manifestly false; for had Lalchand then spoken to him about the rupees, the burkundaz and others in charge of Lalchand and Heera Lal must have also heard him, I would convict him on both charges; and as there exists no legal proof but merely suspicion of Lalchand having been accessory or privy to the theft, and Rampershad Chowdry himself admits that he at once charged or stated that he suspected Ramchunder Sehlee of having stolen

the money in consequence of his having sent him to the post office, and notwithstanding he was in possession of the key of the door of the house, there was nothing to prevent Ramchunder Sehlee's procuring another key that would open the door, for though the lock in question was of a peculiar description, all native locks of their several sorts are very similar, I would acquit and release him.

I therefore recommend that Ramchunder Sehlee be sentenced to seven (7) years' imprisonment with labor in irons, and that Lalchand be acquitted and discharged.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) Having examined the proceedings, we agree with the sessions judge that there is not sufficient proof against Lalchand for conviction. We therefore acquit him and direct his release. We concur with the law officer in convicting Ramchunder Sehlee of only having in his possession the stolen property knowing it to be stolen, but we sentence him, as proposed to seven years' imprisonment with labor and irons.

PRESENT:

A. DICK AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT

versus

AURUTH SAHOO.

Cuttack.

CRIME CHARGED.—Rape on the person of Jema, the foster daughter of the prosecutrix, a girl aged at that time about nine years.

Committing Officer.—Mr. T. B. Lane, assistant magistrate of zillah Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of zillah Cuttack, on the 21st September, 1854.

Remarks by the sessions judge.—The particulars of this case are as follows.

At about 1 p. m. about the middle of the month of Kartick 1261, corresponding with October 1853, while Ruttunmonee the prosecutrix was sitting at the house of her neighbour Heera (in the Buxshy or regimental bazar in the town of Cuttack) conversing with her and others, the prisoner Auruth Sahoo the paramour of Ruttunmonee went to her house, and shortly afterwards, Golabee one of her girls, witness No. 3, having gone to a neighbouring well to draw water, in her return to the house found Jema a child nine years of age standing or lying naked

1854.

October 20.

Case of
RAMCHUNDER
SEHLEE
and another.

1854.

October 24.

Case of
AURUTH SA-
HOO.

Prisoner con-
victed of rape
on a child
about nine
years old, and
sentenced to
seven years'
imprisonment
with labor in
irons.

1854.

October 24.

Case of
AURUTH SA-
HOO,

near the door writhing with pain and blood streaming from her person, and called out to Ruttunmonee to come quickly, whereupon Ruttunmonee with Heera, Subjee and Gouree with whom she was conversing went immediately and learned that Jema had been violated by Auruth Sahoo. The prosecutrix then assisted by the others attended to Jema, who is said to have been suffering great pain, and a few hours afterwards gave information to Bhagbut Chowdry witness No. 9, attached to the regimental bazar, who again communicated the occurrence to Bhola Baboo his immediate superior, and by his order, went to the house of Ruttunmonee and saw Jema lying insensible, and her clothes, &c. saturated with blood. And on the following morning he with the said Bhola Baboo took Jema and Ruttunmonee before the adjutant of the 42nd regiment M. N. I, who sent them to the police thannah, when the darogah deputed a jemadar and burkundaz in search of Auruth Sahoo, but he was not to be found; and the darogah having neglected to report the occurrence to the magistrate, nothing more was done in the matter till the 6th of the current month of September when Auruth Sahoo was taken before the adjutant by one of the sepoys or native officers of the regiment on a charge of cheating, or making some silver ornaments short of the weight agreed on or charged for, and one of the party present having indicated him to the adjutant as the individual who had ravished Jema some months previous, he forwarded him with a note to the magistrate, who referred the case for investigation to the committing officer, Mr. Assistant T. B. Lane.

Goolabee, witness No. 3, aged fifteen deposed that about 1 p. m. on the day of the occurrence, while Ruttunmonee was sitting at the house of Heera witness No. 5, the prisoner Auruth Sahoo came to the house, and on Jema's informing Ruttunmonee that "her father" had come, she told her to give him some tobacco and *pan*, and tell him she was engaged talking with her neighbour, and on Jema's return to the house, Auruth Sahoo told her to *shampoo* his back, and she sat down to do so when witness went to draw water from a neighbouring well, and on her return found Jema in the condition above described, and gave the alarm to Ruttunmonee. She likewise stated that she saw Auruth Sahoo abscond from the house by a back-door in the direction of his own house.

Subjee, Heera, and Gouree, witnesses Nos. 4, 5, and 6 as well as Ruttunmonee the prosecutrix, deposed generally that they saw the prisoner Auruth Sahoo pass by Heera's house, where they were sitting conversing together and go towards Ruttunmonee's house, also that Jema informed Ruttunmonee that her father, alluding to the prisoner, had come to the house, and that when Goolabee returned from drawing water at the well, she called out to Ruttunmonee to go to the assistance of Jema,

and that they all went and saw her naked, with blood flowing from her person, and heard that Auruth Sahoo had violated her.

Mooneeah witness No. 7 deposed that she saw the prisoner absconding after the occurrence from the direction of Ruttunmonee's to that of his own house.

Bhagbut Chowdry witness No. 9, deposed that after receiving information of the occurrence from Ruttunmonee, he, by order of his immediate superior, Bhola Baboo, went to the house and saw Jema in a state of insensibility, and blood on her clothes and about the house, and that next day he took her before the adjutant.

Dr. G. S. Scott, the civil surgeon, deposed that he examined the person of Jema, and that she had lost all traces of virginity.

Mahomed Ali Khan jamadar, and Wahid Beg, witnesses, summoned by this Court deposed that in the month of Kartick last, they, at the direction of the police darogah, searched for the prisoner at his house, but could not find him and were told by his neighbours and others he had gone somewhere.

The child Jema was not examined on oath before the assistant magistrate, because, as is stated, she did not understand the nature or obligation of such oath.

The prisoner Auruth Sahoo pleaded *not guilty* throughout the investigation, and stated that he left Cuttack to go to Killah Sookindah, the day before the occurrence, and heard on the road that he had been accused of committing a rape on the person of Jema.

The *fatwa* of the law officer, which accompany this report, convicts the prisoner Auruth Sahoo of the crime of rape on violent presumption, and in this verdict I concur. For notwithstanding Ruttunmonee, as objected to by the prisoner, in the first place stated before the seristadar of the magistrate's court, who was deputed to hold local enquiry into the case, that she had no witnesses, and therefore did not cause the apprehension of the prisoner, and I do not think implicit confidence can be placed on the testimony of Ruttunmonee, or that of witnesses Nos. 4, 5 and 6 regarding their having seen the prisoner go to the house of Ruttunmonee at the time of the occurrence, it is satisfactorily proved that Jema was ravished; and I see no reason to doubt the truth of the evidence given by Goolabee witness No. 3, or of the fact of the above witnesses having accompanied Ruttunmonee to her house and seen the distressed state in which Jema was, and heard from her and Goolabee, that Auruth Sahoo was the individual who committed the rape on her. In short, I consider the fact fully corroborated by the flight of Auruth Sahoo, immediately after the occurrence, and his own statement to the effect that he heard on the road to Sookindah that he had been accused of ravishing her. And so far from Ruttunmonee's being desirous to procure his punishment, or

1854.

October 24.

Case of
AURUTH SAHOO.

1854. charge him falsely, it is evident that he being her paramour and in the habit of co-habiting with her before and subsequent to the rape, she did everything in her power to screen him after Jema recovered. I therefore beg to submit the case for such orders as the Court may think fit to pass.

October 24.
Case of
AURUTH SA-
HOO!

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The Court, concurring with the moofftee and the sessions judge, convict the prisoner of rape on violent presumption, and adverting to the tender age of the child, sentence him to seven years' imprisonment with labor in irons.

PRESENT :

H. T. RAIKES, Esq., *Judge.*

GOVERNMENT

versus

Mymensingh.

SHEIKH BUKTEAR.

1854. CRIME CHARGED.—Severely wounding Runjun Aurut, with intent to murder her.

October 24. CRIME ESTABLISHED.—Severely wounding Runjun Aurut, with intent to murder her.

Case of SHEIKH BUKTEAR. Committing Officer.—Mr. C. E. Lance, assistant with powers of joint-magistrate at Jamalpore.

Prisoner convicted of severely wounding his wife with intent to murder her, sentenced to 14 years' imprisonment. Tried before Mr. W. T. Trotter, sessions judge of Mymensingh on the 18th August, 1854.

Remarks by the sessions judge.—The prisoner and his wife, the wounded woman, Runjun, lived in the premises of witness No. 6, Koosha Sheikh, uncle of the prisoner, and she desired him to go to her brother's house and ask him to come and take her there, as she was in the family-way and disliked the house of her husband's uncle; on the night of the occurrence before day-break, she asked him if he had been to her brother, and abused him; upon this, he became enraged and seizing a sickle, used for cutting grass with, which was hanging in the room, he cut her throat with it. Her screams immediately attracted witness, No. 6, and (prisoner's brother) No. 9, who occupied an adjoining house in the same premises and who saw the prisoner holding his wife's hair with one hand and the sickle in the other, and the woman covered with blood, they (the witnesses) then took them out and saw that she had a severe wound on her throat and three on the right hand. On the neighbours collecting, he was immediately secured, and made over to the village chowkeedar.

Appeal rejected.

The prisoner throughout admitted having wounded his wife in the manner described for her having used unbecoming lan-

guage to him. The law officer, declares him guilty of the crime charged and liable to *seasut*. I concurred in the verdict, and sentenced him to fourteen years' imprisonment with labor and irons, considering from the instrument used, and the throat being cut in a most severe manner, that the proof was conclusive as to his intent to murder his wife. Happily the woman's screams attracted the witnesses and neighbours in time to prevent his designs from terminating fatally.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The prisoner after admitting throughout that the wound on his wife had been inflicted by him, asserts in appeal that his wife had listened to one Shooteeah and wished to leave him (her husband) which had induced him to chastise her, and in consequence of the beating she attempted to cut her own throat. Shooteeah then accused him of the deed, and under the persuasion of the darogah, he confessed before the magistrate that he did it.

The evidence of the woman, however, and of the other witnesses, leaves no room for doubt, and I concur in the prisoner's conviction and reject his appeal.

1854.

October 24.
Case of
SHREE BUK-
THAR.

PRESENT:

A. DICK AND B. J. COLVIN, Esqs., *Judges*.

GOVERNMENT

versus

MUNDUL SHIKILGAR.

Patna.

CRIME CHARGED.—1st count, burglary and theft of property, valued at Rs. 131, belonging to Hurrak Singh; 2nd count, knowingly receiving part of the stolen property aforesaid.

1854.

CRIME ESTABLISHED.—Knowingly receiving part of the stolen property.

October 24.

Case of
MUNDUL SHI-
KILGAR.

Committing Officer.—Mr. W. Ainslie, magistrate of Patna.

Tried before Mr. W. Travers, sessions judge of Patna, on the 18th July, 1854.

The evidence
against the pri-
soner, appel-
lant, being
convincing,
though cir-
cumstantial,
the sentence
passed on him
upheld.

Remarks by the sessions judge.—The prisoner in this case is one of a body of men tried before this court in March last, see No. 1, calendar of that month, where the prisoners were acquitted for want of evidence; Mundul, who is now on trial, effected his escape at the time from witness No. 1, who is a Chowkeedar, but a gun, the property of the prosecutor, was wrenched out of his hand in the struggle, and upon the evidence of its identity, as part of the stolen property, he is now committed. There is some discrepancy in the depositions of witnesses Nos. 2 and 3, in

1854.
 October 24.
 Case of
 MUNDUL SHI-
 KILGÂN.

respect to points which occurred at the time of the prisoner's escape from the hands of Phagoo, but nothing more than may be accounted for by the darkness of the night, and the length of time which has elapsed since the burglary took place. It has been necessary, however, to order the commitment of one witness, No. 2, for perjury. On the whole, I consider it fully established that the prisoner is the identical Mundul found in possession of the prosecutor's stolen property, and the *futwa* of the law officer being concurrent, he is convicted on the second charge in the indictment and hereby sentenced to five years' imprisonment with labor in irons and two years additional in lieu of stripes, altogether seven years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) The facts proved in the case, of the prisoner having been seized carrying away the gun, in the *night* time from the house of a man strongly suspected of the burglary committed in the house of the prosecutor, who identified the gun as the one stolen from him; and of the prisoner being freed from the chowkeedar who had seized him, by the suspected person: and lastly, the flight and absence of the prisoner from his house for months from that very night, are violently presumptive of his guilt. The Court, therefore, see no reason for interfering with the sentence passed on the prisoner by the sessions judge.

PRESENT:

Backergunge.

H. T. RAIKES, Esq., Judge.

1854.

October 24.

Case of
 NUBBO-
 KISHEN
 SHAHA and
 others.

GOVERNMENT,

versus

TRIAL NO. 2. NUBBOKISHEN SHAHA.

TRIAL NO. 3. NUBBOKISHEN SHAHA (No. 12,) KISTO
 MUNGUL CHUND (No. 13,) AND MEHER ALLY
 (No. 14.)

CRIME CHARGED.—Trial No. 2, 1st count, maliciously and fraudulently procuring a forged document against Dhun Chowdree and Sheeb Singh; 2nd count, uttering and causing to be uttered the above forged document. Trial No. 3, prisoner No. 12, with subornation of perjury in causing the prisoners, Nos. 13 and 14, to depose under a solemn declaration taken instead of an oath before Syud Abdoolah, the acting moonsiff of Burrisaul, zillah Backergunge, that Dhun Chowdree and Sheeb Singh had borrowed from him (prisoner No. 12,) Co.'s Rs. 50,

In a conviction of uttering a forged document, subornation of perjury and perjury, the sentences passed by the sessions judge were upheld in appeal.

on a bond, which bond was executed on the 15th Srabun, 1254, and that they (prisoners Nos. 13 and 14,) were attesting witnesses to that bond, such deposition being false and having been intentionally and deliberately caused to be made by the prisoner No. 12. Nos. 13 and 14, charged with perjury, the former in having on the 18th July, 1853, and the latter in having on the 19th Idem, deposed under a solemn declaration taken instead of an oath before Syud Abdoollah, acting moonsiff of Burrisaul, zillah Backergunge, that Dhun Chowdree and Sheeb Singh had borrowed Co.'s Rs. 50, on a bond from the prisoner, No. 12, which bond was executed on the 15th Srabun, 1254, and that to that bond they (prisoners Nos. 13 and 14,) were attesting witnesses, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Trial No. 2, prisoner No. 12, uttering a forged document. Trial No. 3, prisoner No. 12, convicted of subornation of perjury, and prisoners, Nos. 13 and 14, of perjury.

Committing Officer.—Mr. H. A. R. Alexander, officiating magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 5th June, 1854.

Remarks by the sessions judge.—The prisoner in this case sued the two eye-witnesses, No. 6, Sheeb Singh, and No. 7, Dhun Chowdree, in the Burrisaul moonsiff's court, on a bond alleged to have been executed to him by them jointly. The bond was dated 15th Srabun, 1254, and was for 50 Rs. During the trial of the suit, when the bond came to be closely inspected, it became apparent that the bond was dated eleven months and fifteen days prior to the purchase of the stamp paper and was, therefore, to all appearance, a forgery. An investigation into this matter was immediately set on foot, and the result was that the prisoner was made over to the magistrate, by whom he has been committed to stand his trial in this calendar, for procuring a forged document and giving utterance to it, and in calendar No. 4, for having suborned the evidence of the persons produced by him to depose to the bond in the moonsiff's court. These two cases springing out of the same transaction, it is better to dispose of them together in the same place.

The charges of uttering a forged deed and of subornation of perjury, as laid to the prisoner in the two calendars, are fully substantiated by the evidence adduced against him.

His defence has all along been that he knows nothing of the bond, that he never lent the money, and that he had nothing to do in producing the witnesses who attested the bond in the moonsiff's court. However, as already observed, the evidence

1854.

October 24.

Case of
NUSSO-
KHEN
SHAH and
others.

1854.	against the prisoner is complete in every respect. It is proved*
October 24.	* Witness No. 1, Ramkissore Doss.
Case of	2, Becharan Dutt &
NUBBOKISHEN	Kebulkisto Chatterjia.
SHAHA and	" 3, Ramrumun Doss.
others.	" 4, Budun Chunder Doss.
	" 5, Nussoruddin and
	Kebulkisto Chatterjia.
	" 8, Ramkanye Bose.
	" 9, Srenath Mozoomdar.
	" 10 Doorga Churn
	Roy and Kebulkisto Chatterjia.

that he signed the *vakalatnamah* for the purpose of instituting the action,† that he personally delivered the bond into his mooktear's hand to be filed as proof, that he accompanied‡ his witnesses into the station, and remained with them at his mooktear's residence, while they remained here awaiting their examination before the moonsiff, and that he constantly came to his mooktear to enquire how his suit was getting on: that the bond is a forgery is directly proved by the evidence an oath of the two parties,§ by whom it was alleged to have been executed, and by the fact that it was morally impossible that the bond could be true, seeing that the stamp paper on which it is engrossed, was not purchased for nearly a year after the date of its recorded execution.

the defence of the prisoners, No. 13, Kisto Mungul Chund, and No. 14, Meher Ally, the witnesses who gave their evidence before the moonsiff in support of the bond, is that the money was really lent by the prisoner No. 12, Nubbokishen Shaha, that it was received by the parties executing the bond, and that they, the prisoners, were witnesses to it. That the whole transaction is true from beginning to end, but unfortunately the date of the transaction, which ought to have been the 15th Srabun, 1255, was erroneously and inadvertently stated in the bond, 15th Srabun, 1254. It is however very unlikely that in drawing up an obligation for money, the parties would have made a mistake *in the year*,—in the day a mistake might occur, but in the year, it is not in the least likely. Supposing even that such might have been the case, is it to be believed that the error would not have been discovered very soon afterwards, when the party to whom it belonged took it out for inspection, as it is natural to suppose he often did, but the error, if error it was, was not noticed till it was detected on the trial in the moonsiff's court, and the prisoners in their deposition stated distinctly that the year in which the bond was executed was 1254.

The law officer found the prisoners guilty and they were sentenced accordingly. Prisoner No. 12, to a consolidated sentence of five years on a conviction of uttering a forged deed and subornation of perjury, and the other prisoners to three years on a conviction of perjury.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) Nothing can be more convincing than the evidence

for the prosecution proving that Nubbokishen instituted the suit, paid the expenses and forwarded the bond to his agent to be filed in the action. His defence repudiating all these acts of his is in itself sufficient to support a presumption of his guilt. It is not likely that the witnesses would have given a wrong date to the transaction in their deposition, merely on the ground that a clerical error had been committed by the writer of the bond regarding the true date, and that the same error would be found repeated in the pleadings, &c. I see no reason to interfere with the convictions of all the prisoners and reject their appeals.

1854.

October 24.

Case of
NUBBOKISHEN
SHAH and
others.

PRESENT :

A. DICK, Esq., SIR R. BARLOW, BART., AND B. J. COLVIN, Esq., *Judges*.

GOVERNMENT AND PURAUN RAM DASS

versus

RAMJIBUN ALIAS JEEBUN CHUNG.

Sylhet.

1854.

CRIME CHARGED.—Wilful murder of Dagooram Dass.

Committing Officer.—Mr. T. P. Larkins, officiating magistrate of Sylhet.

October 24.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 8th September, 1854.

Case of
RAMJIBUN
alias JEEBUN
CHUNG.

Remarks by the sessions judge.—The prisoner pleads guilty to the charge, and the circumstances under which the murder took place, are best told by himself.

He states that he and one Moolie caught one Bolie Chung stealing a *dhurree* or fish-trap, and that they beat him and let him go. That he went and complained to his zemindars, Kanocram and Pandubram, and that they sent the deceased to apprehend them. That when the deceased caught him he struggled to get loose, but being unable to effect his escape and getting angry, he struck the deceased with a *dao*, and on his falling, repeated the blows, and that seeing he had killed him, he ran away.

The prisoner was sentenced to transportation for life, for having in disengaging himself from a peadah who had no legal authority to seize him, killed him. His plea that he did it in defence of his life, not being substantiated.

This story is confirmed by the witnesses; and the *post mortem* examination shews that the deceased had eight wounds inflicted on him, two of which, one on the chest, and the other on the throat, caused his death.

The confessions are proved to have been voluntarily made and the prisoner in extenuation urges before this Court that he committed the deed to save his own life.

The arrest of the prisoner by the deceased was clearly illegal, and the provocation received by him was great, but he armed

1854.

October 24.

Case of
RAMJIBUN
alias JEMBUN
CHUNG.

himself with the *dao*, before the deceased arrived and deliberately killed him, when he had lost all power of resistance.

The jury convict the prisoner of wilful murder, and in this verdict I concur, but under the circumstances, I am of opinion that a sentence of fourteen years' imprisonment with labor in irons will be sufficient.

As it appeared from the deposition of Moolie Chung that the zemindars had imposed a fine of 5 Rs. upon him and the prisoner, the magistrate has summoned them to answer for their illegal act.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. Dick, Sir R. Barlow and Mr. B. J. Colvin.)

Mr. A. Dick.—There are no eye-witnesses to the crime except the testimony of one witness who saw one blow struck. The prisoner in his confessions has stated, he was about going out to cut grass and had the *dao* or the bill-hook in his hand, when the deceased seized him. They struggled and finding the deceased would not release him, struck him repeatedly till he fell, then seeing he had killed him, fled. This is the purport of his confession before the magistrate. The confessions before the police and at the sessions are evidently not trustworthy in their details, that before the police telling much more against him, and that at the sessions almost justifying him: for he there said, he had been disgraced, and was in fear of his life. The appearances of the wounds on the body, corroborate the above confession before the magistrate. There is no evidence to prove that prisoner armed himself with the *dao* for defence; he expressly states he took it to cut grass. He was suddenly seized, and his attack on the deceased was equally sudden. Had he desisted from repeating the blows with the *dao*, when the deceased on receiving the first cut, released his hold, the conduct of the prisoner might have been justified, as the act of seizure by deceased was illegal. The subsequent deadly blows he dealt, convict him of culpable homicide of an aggravated nature, and I would sentence him to fourteen years' imprisonment, as recommended by the sessions judge. This is the heaviest sentence, which can, I think, be passed with advertence to the case of Ramchurn Rai, N. A. Reports, 5th February, 1852. The prisoner in that case as in this, killed his victim when committing an illegal act, and when he was incapable of resistance. He was sentenced to seven years' imprisonment; and that sentence was afterwards cancelled, after a short period, by the Governor-General at the recommendation of a majority of the judges of the Sudder Nizamut, as being too severe, without any thing new being brought to light.

Mr. B. J. Colvin.—I consider that under all the circumstances of this case, a sentence of not less than transportation for life should be passed upon the prisoner. The only thing in his

favor is, that he acted without premeditation, otherwise he would, in my opinion, have been liable to a sentence of death.

Without regarding the thannah confession, according to which the prisoner struck the deceased several times after he had been felled to the ground by the first blow, his confessions before the magistrate and sessions judge shew that on his seizure by the peadah he at once attacked him with the *dao*, which he had in his hand, and struck him repeated blows with it; which ended in the man's almost instantaneous death. The prisoner added before the sessions judge, that the deceased had a *lattee* and had by entering his premises disgraced him, and put him in fear of his life, but besides that, he did not tell the magistrate this story, there was nothing in the circumstances of his capture, which should have put him in fear of his life, and the weapon was not therefore required to be used for self-defence. He may have used it in a sudden fit of passion at being seized, but there was nothing in the mode of seizure to justify his disengaging himself at the expense of the peadah's life, which he took unnecessarily, as the peadah does not appear to have held hold of him to the last.

Sir R. Barlow, Bart.—I concur with Mr. Colvin in sentencing the prisoner Ramjibun to transportation for life. His story before the sessions judge, of having acted in defence of his own life, is clearly an after-thought prepared no doubt during his confinement in the jail previous to his commitment to the sessions. Before the police and before the magistrate also, he fully admitted that he cut down the deceased, because he had seized him by order of the *Meerasidar*, in neither of the confessions is any allusion made to the deceased having a *lattee* with him, nor is any thing said by the prisoner of his being in fear for his life, and of his having done the deed in self-defence. The corpse exhibited as many as seven or eight wounds, and death ensued immediately after they were inflicted.

1854.

October 24.

Case of
RAMJIBUN
alias JENBUN
CHUNG.

PRESENT :

A. DICK AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT AND PREMCHAND

versus

24-Pergunnahs.

SHEIKH BECHOO (No. 1,) MEER PEERBUX (No. 2, APPELLANTS,) AND SHEIKH ELAHEEBUX (No. 3.)

1854.

October 25.

Case of
SHEIKH BE-
CHOO and
others.

CRIME CHARGED.—1st count, burglary in the house of the prosecutor Premchand Kulloo and theft of rupees and property to the amount of Rs. 338-3 therefrom ; 2nd count, receiving the stolen property knowing it to have been such.

CRIME ESTABLISHED.—Burglary and theft.

Committing Officer.—Mr. H. Fergusson, magistrate of 24-Pergunnahs.

The prisoners' appeal was rejected, their mofussil confessions having been corroborated by the finding of the property.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 21st July, 1854.

Remarks by the officiating additional sessions judge.—This is a case of house-breaking by cutting the fastening of the mat-fence used as a door. The prosecutor and his family were asleep at the time the robbery was committed, and can give no account of the affair, but it appears from the admissions made by the prisoners that it was concerted and executed conjointly by them in the manner therein set forth. When the prosecutor got up about 4 A. M., he perceived by a candle which he had occasion to light, that the lid of his large chest had been forced. The box was open, but the valuables it contained were gone. These consisted of two *ungoots* of gold, some pieces of old silver, a *tusser* silk *dhootie*, another cloth ditto with a scarlet edge, a child's silver waist chain, and cash to the amount of Rs. 290. As soon as it was morning, the prosecutor apprized the chowkeedar of the theft and his suspicions immediately fell on Sheikh Bechoo, prisoner No. 1, who was absent from home during the night, having twice neglected to answer his challenge. The chowkeedar communicated his suspicions to the darogah, who had Bechoo apprehended and brought before him, when the prisoner made a detailed confession of the crime, naming his co-prisoners as his accomplices and giving a full account of the division of the plunder, and the share each person got. He stated that his portion consisted of 100 rupees in cash, some pieces of old silver and a *tusser dhootie*, adding that he had advanced 90 Rs. from that amount as a loan to one Abdool Hamid and given the old silver to be made up into bangles for his mistress to a silversmith of the name of Phul Chand. The man Abdool Hamid confirmed the truth of his statement on oath and produced the money, the silversmith Phul Chand also corroborated the statement and

brought ten small bars of silver, alleging that he had prepared them from the old silver given to him by the prisoner for the purpose of manufacturing the ornaments, and the prisoner's mistress, the witness Amirun Raur, gave up the *tusser dhootee* as received from the prisoner. The other prisoners were arrested on the confession of Bechoo. The prisoner Peerbux, No. 2, admitted his guilt at the thannah and said that he also had received the sum of 100 rupees as his share of the booty which, together with 75 rupees in his possession at the time, he had locked up in a box. That aggregate amount was found in his house. The prisoner Elahcebux Sheikh, No. 3, confessed both before the police and the magistrate. He admitted that his share of the spoil were 20 rupees in cash, a silver waist chain and a new scarlet edged *dhootee*. He further stated that he had purchased a sovereign for 10 rupees, and converted the balance into a 10 rupees Bank Note and had left the *dhootee* at the house of the witness, Amirun: on the premises of his mistress, the witness Azimunnissa, were found the sovereign and the Bank Note, and the woman Amirun gave up the *dhootee*. There is a slight discordance between the mofussil and foudjary confession, which consists in the alleged amount of cash received as booty. In the former, that amount is fixed at 20 rupees and in the latter at 15 rupees, the additional 5 rupees required to purchase the sovereign and Note, being supplied from the prisoner's own resources. Independent of the prisoners' admissions and the remarkable corroboration they receive from the finding and recovery of the property, the testimony of Amirun Raur goes distinctly to prove that the prisoners were together on the early part of the night of the robbery, and were seen towards morning making a division of cash and other property. This evidence comes with double force when it is remembered that the deponent is the creature of the principal prisoner, and naturally interested in his welfare. This is an admirable case, and reflects much credit on the magistrate.

Sentence passed by the lower court.—Nos. 1 and 2 to be imprisoned with labor and irons in banishment for nine (9) years each, and No. 3 to be imprisoned with labor and irons in banishment for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. Dick and B. J. Colvin.) We see no reason to interfere with the conviction of the prisoners, Nos. 1 and 2, who have appealed, or with the sentences passed upon them. Their confessions before the darogah were corroborated by the production of nearly all the property stolen, and though afterwards denied by them, by the defences put forth by them, they could not substantiate. Moreover the evidence of Amirun was most convincing of their guilt.

1854.

October 25.
Case of
Sheikh Be-
choo and
others.

PRESENT:

A. DICK AND B. J. COLVIN, Esqs., *Judges.*

GOVERNMENT

versus

Midnapore.

DOORGARAM MUNDUL.

1854.

October 25.

Case of
DOORGARAM
MUNDUL.

CRIME CHARGED.—Wilfully, maliciously and severely wounding witness No. 1 with a *lattee* on the head with intent to murder him, and thinking him to be dead, threw him into the river.

CRIME ESTABLISHED.—Assault attended with aggravating circumstances.

Committing Officer.—Moulvee Golam Safdur, law officer, exercising powers of a magistrate.

The prisoner's appeal was rejected, the evidence against him being conclusive.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 25th October, 1854.

Remarks by the sessions judge.—This trial is supplementary to that held in this court on the 26th January last. The particulars as deposed by the witness No. 1, as stated on his previous examination and now corroborated by him, are as follow. On the night of the 27th October last, his lodging was entered by a body of men armed with sticks, who assaulted him and forcibly carried him away and threw him into the river, that with difficulty he effected his escape, and proceeded to the house of the witness No. 9, Chota Bungshee Mundul, who applied medicines to his wounds, and offered him shelter till his relations came and took charge of him. The prisoner pleads *not guilty* and sets up an *alibi*. The evidence of Seeboo Roy, witness No. 1, is fully corroborated as to the fact of his being taken away and violently assaulted though there is nothing on record, save Seeboo Roy's statement, to show that he was thrown into the river, or that his life was ever in danger. The wounds according to the medical officer's report, which was received as evidence during his absence, and the *sooruthal* were of a superficial nature, and no serious effects were likely to ensue therefrom. The assault, however, was an aggravated one made to gratify a grudge which the prisoner and others in his village had long entertained against Seeboo Roy. The prisoner totally fails to substantiate his plea of *alibi* and his running away from his village and taking service with a Mr. Martin as a peadah at Amtah, eight or ten *cos* from his home, is presumptive of his guilt in endeavoring to elude the search that has been made for him by the police. The assessors declare the prisoner guilty of an aggravated assault on Seeboo Roy, we concur in this finding and sentence him as indicated in the statement. There are some irregularities in the commitment to which the attention of the magistrate has been called.

Sentence passed by the lower court.—Three years' imprisonment without irons, and to pay a fine of fifty (50) rupees within one month, or in default of payment, to labor until the fine be paid, or the term of sentence expire.

Remarks by the Nizamut Adawlut.—The prisoner was named from the very first, as engaged in the outrage. The evidence as to his *alibi* is of no value. Seeing no reason to interfere with the conviction and sentence, we reject the appeal.

PRESENT :

J. DUNBAR AND H. T. RAIKES, Esqs., Judges.

GOVERNMENT AND URNOPOORNAH NAPTINEE

versus

NITTAE DASS BYRAGEE (No. 1.) BENEE MOYRA (No. 2.) AND MIRTUNJOY, ALIAS MECHOO CHUCKERBUTTY (No. 3)

CRIME CHARGED —1st count, being accomplices in the wilful murder of Teloke Naptinee, daughter of Urnopoornah, prosecutrix ; 2nd count, being accessory after the fact of the above-mentioned wilful murder.

Committing Officer.—Mr. H. Rose, officiating magistrate of Beerbhoom.

Tried before Mr W T. Taylor, officiating sessions judge of Beerbhoom, on the 4th September, 1854

Remarks by the officiating sessions judge.—The deceased Teloke Naptinee, prostitute, resided in the village of Jamooa, and was murdered on the night of the 31st Assar, B. S, 1261 or 14th July, 1854.

From the evidence of the witnesses* for the prosecution, it would appear that deceased was in company with the three prisoners, and one Ramdhun Bhoojporea (absconded) at her house, that about

10 P. M a noise, as of a person being strangled, was heard issuing from her house by her neighbours the witnesses for the prosecution ; and shortly afterwards, prisoners Nos. 1 and 3 came

† No. 13, Ramsoondar Gope. to witness No. 13,† and asked him to help in removing the body of the

‡ No. 13, Ramsoondar Gope. unfortunate deceased, who had been murdered, which he refused to do.

„ 14 Jadoo Chassin. Prisoners Nos. 1, 2 and 3 with the absconded party, were then seen by

„ 15, Sukhee Chassin. witnesses Nos. 13, 14 and 15,‡ carrying the body towards the nullah, where it was subsequently found

1854.

October 25.

Case of
DOORGAH MURDER.

1854.

October 25.

Case of
NITTAE DASS
BYRAGEE
and others.

Prisoners
charged as ac-
complices in
the wilful murder of a prostitute, acquitted owing to the insufficiency of the evidence.

1854.

October 25.

Case of
NITTAR DASS
BYRAGUN
and others.

An inquest was held by the darogah of thannah Bhurtpore on the body, on which was found a wound on the right side of the head. On proceeding to the house of the deceased, it was found closed with a lock on it, and when opened, considerable quantities of blood covered the mat and pillow on which the deceased generally slept. At the foot of the mat was discovered a knife or *bunties*, partially stained with blood.

The corpse was sent in to the magistrate, and on its being examined by the medical officer of the station, he was of opinion that the party had died a violent death, that the wound on the head was the cause.

Prisoner No. 1, in defence before the court, denied all knowledge of the murder, and, also of having made a statement on the matter before the magistrate.

Prisoner No. 2, in defence states he was at the house of the deceased in the afternoon of the 31st of Assar, and that he there saw prisoner No. 1, Ramsoondar Rujpoot, Byrub Sunker, Ramdhun Sircar, Ramdyal Thakoor, and Ramdhun Bhoopore, absconded, they were all seated; that he did not remain but went to his home, as he was leaving, he met prisoner No. 3 entering the premises of the deceased's house.

Prisoner No. 3, in defence states that he went to the house of the deceased at about night fall for the purpose of lighting a lamp, and he there saw one Ramsoondar Roy Rujpoot, Ramdyal Sircar and others whom, he did not recognize, seated. He did not remain, but having lighted his lamp, returned to his house. This prisoner, as well as prisoner No. 2, denies all knowledge of the crime.

The jury after considering the evidence and being warned to give the benefit of any doubt in their minds as to the guilt of the prisoners in their favor, brought in a verdict of guilty against the whole of the prisoners on the 2nd charge of the indictment: "Being accessories after the fact of the wilful murder."

In the opinion of the court, the prisoners are guilty of both charges. The evidence of the witnesses* clearly shew that the

* No. 13, Ramsoondar Gope.

„ 14, Jadoo Chassin

„ 15, Sukhee Chassin.

three prisoners were present at the time the crime was committed and were heard quarrelling with the deceased, though there is no evidence

to prove which of them gave the fatal blow, nevertheless it is to be presumed that each of them lent assistance in the murder, and are therefore equally culpable in the eye of the law.

Having given my serious attention to the whole of the circumstances attending the murder of this unfortunate woman, I consider the prisoners have justly forfeited their lives by having deprived a fellow-being of hers; nevertheless I am inclined to suppose that the prisoners did not meet for the purpose of committing the murder, rather that they with others had as-

sembled at the house of Teloke, a prostitute, who allowed nightly orgies to take place at her residence, being irritated by some acts or words of the deceased, assaulted her, and finding they had committed murder, endeavoured to conceal the body by throwing it into the *nullah*, where it was found. Under this impression, I would recommend that the three prisoners should be imprisoned with labor and irons in banishment for the period of twelve (12) years.

1854.

October 25.
Case of
NITTAE DASS
BYRAGSE
and others.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and H. T. Raikes.) After hearing the proceedings in this case, we find it quite impossible to place any reliance on the witnesses referred to in the 3rd paragraph of the judge's letter. As stated by him, they depose to circumstances which, if true, are sufficient to implicate the prisoners as accomplices in murder, but the case stands entirely on the credit due to their statements which, under the circumstances we are about to allude to, are open to question, the murder (for doubtless the woman died a violent death) is said to have occurred on the 14th of July. On the 17th, the police reached the spot to make inquiries, they soon afterwards reported that the neighbours appeared unable to account for the woman's death, merely stating their suspicions in a general way that some one or other of those in the habit of visiting the deceased must have killed her, but affording no clue whatever to the perpetrators of the crime, nevertheless some persons were apprehended, and on the 22nd, six days after the police had been at work, the witnesses alluded to, gave their evidence, these three persons are members of a family consisting of themselves and a brother named Ramdhun Gope, who lives next door to the deceased, and must, it is natural to suppose, have been questioned by the police when making the report to the magistrate that the neighbours could give no clue to the discovery of the criminals; it is therefore most unaccountable to find these parties, able and willing to give such important testimony, withholding it for so many days from the darogah's notice. It is also strange that Ramdhun, who is mentioned by them as being with them, and present on the night in question, in no respect corroborates a word of their story, there is too much reason to think the depositions on record may have been got up by the police, and we reject them accordingly.

It is not unlikely that the prisoners were present at the deceased's house, on the night she met her death, but setting aside the testimony of the witnesses referred to, there is nothing to connect that solitary fact with the crime charged against them, as there is nothing to show when and with what object the murder was committed. Considering the proof against the prisoners too unsatisfactory for conviction, we direct their release.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, ESQ., *Judges.*

SHEIKH BECHOO AND GOVERNMENT

versus

ANWUR KHAN (No. 1,) ZUMEER KHAN (No. 2, APPELLANTS,) GORAWUR KHAN (No. 3,) AND SHEIKH SHORUF KHOLIFA (No. 4.)

Mymensingh.

1854.

October 26.

Case of
ANWUR KHAN
and ZUMEER
KHAN, appellants, & others.

The sessions judge was informed that the sentence passed upon one of the prisoners was too light. Appeal rejected.

CRIME CHARGED.—1st count, No. 1, wilful murder of Bulleear Khan; 2nd count, being an accomplice in the wounding of Afzul; Nos. 2 and 3, 1st count, being accomplices in the above 1st count, 2nd count wounding Afzul; and No. 4, 1st count, being an accomplice in the above murder and wounding; 2nd count, ordering the above murder and wounding.

CRIME ESTABLISHED.—No. 1, culpable homicide, and Nos. 2, 3 and 4, being accomplices in the same.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 5th August, 1854.

Remarks by the sessions judge.—It was alleged that Sheikh Sobhane, father of prisoner No. 4, having taken lease of a *jote*, which belonged to his brother, one Assanoollah, there was a dispute between the parties regarding the same. It appears from the record of commitment, and the evidence taken on the trial, that on the 11th Bysack, corresponding with the 23rd April last, the prosecutor, Bechoo, witness No. 1, Afzul and the deceased, Bulleear Khan, were employed by Assanoollah in cutting the *dhan* that stood in the field, appertaining to the *jote*, and as they were carrying it to his house, prisoner No. 4, accompanied by the other prisoners and others, opposed them in the way, and attempted to take the bundles to his own house, upon this a scuffle ensued between the parties, and on No. 4 ordering his people to beat the other party, No. 1 inflicted a spear wound on the left side of the deceased, who immediately fell down and died, and as witness No. 1 called out that Bulleear Khan had been killed, prisoners Nos. 2 and 3 wounded him and the prosecutor also, and the latter ran away. The civil assistant surgeon deposed that deceased's death was caused by a penetrating wound on the left side of the chest passing through the lungs, wounding the heart, which must have been inflicted with a long pointed instrument, and that such a wound must have been followed by almost immediate death. The prisoners one and all pleaded *not guilty* throughout, and resorted to *alibi* and enmity with the adverse party for their defence. The evidence of the witnesses

examined on their behalf however was insufficient to establish the pleas set up in defence, or exculpate them from the charge, while some of them denied all knowledge of the points on which they were cited. The *futwa* of the law officer found prisoner No. 1 guilty of culpable homicide, and the others of being accomplices in the same, a verdict in which I concurred.

Sentence passed by the lower court.—No. 1 to be imprisoned with labor and irons for seven (7) years, and Nos. 2, 3 and 4, each to four (4) years' imprisonment without irons, and to pay a fine of 50 Rs. on or before the 5th September, 1854, or in default of payment, to labor until the fine be paid, or the sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow and Mr. B. J. Colvin.) We see no reason to interfere with the conviction in this case, but we think that the sentence passed by the sessions judge upon prisoner No. 1 is much too light. We cannot however, with reference to the law, enhance it. It is proved that he came out armed with a *soolfee*, which he at once struck deceased with, so fatally, that his instantaneous death, the heart having been penetrated, ensued. This case should, in our opinion, have been referred for the Court's orders, as requiring a sentence upon prisoner No. 1, beyond the sessions judge's power to pass. We reject the appeal.

1854.

October 26.

Case of
ANWUR KHAN
and ZUMMER
KHAN, appel-
lants, & others.

PRESENT :

SIR R. BARLOW, BART., AND B. J. COLVIN, Esq., *Judges.*

GOVERNMENT

versus

MUSST. PROBA, (No. 3,) JADUB MALLEE (No. 4,) MUSST. BOCHUN MALLEENEE (No. 5,) MUSST. PUDDO (No. 6, APPELLANT,) AND MUSST. ROBO (No. 7.)

Sylhet.

1854.

CRIME CHARGED.—1st charge, wilful murder of Musst. Nirma; 2nd charge, culpable homicide of Musst. Nirma, by administering and causing to be administered, drugs to produce abortion; 3rd charge, being accomplices in the crimes charged in the 1st and 2nd counts.

October 26.

Case of
Musst. PUDDO
and others.

CRIME ESTABLISHED.—No. 3, culpable homicide of Musst. Nirma, and Nos. 4, 5, 6 and 7, being accomplices in the culpable homicide of Musst. Nirma.

Committing Officer.—Mr. T. P. Larkins, officiating magistrate of Sylhet.

Appeal re-
jected, prison-
er's guilty
knowledge be-
ing apparent.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 26th August, 1854.

Remarks by the sessions judge.—There is scarcely any evidence against the prisoners, except that of their own confessions,

1854.

October 26.

Case of
Musst. Puddo
and others.

which are proved to have been voluntarily made before the darogah and repeated to the magistrate.

The deceased came to the village of the prosecutor and died two days afterwards, and he gave notice of her death at the thannah, and on inquiry it was proved that she had had a miscarriage and the deposition of Huree Mallee, witness No. 1, led to the apprehension of the prisoners.

The prisoner, No. 3, admits that she administered medicine to the deceased, through the hands of Jadub, prisoner No. 4, with the view of procuring a miscarriage, but that death ensued.

The prisoner, No. 4, admits that he took measures for procuring medicine to procure abortion, but he says prisoner, No. 3, administered them, he being present. The prisoner, No. 5, admits that she was present when Proba took measures to procure the abortion, but she took no active part.

The prisoner, No. 6, admits that she procured certain medicines from the prisoner, No. 3, and took her to the house of the deceased.

Prisoner, No. 7, states that the deceased consented to give ten annas to the prisoner, No. 3, to produce abortion, that she, prisoner, No. 7, went to the deceased, and brought her to the prisoner, No. 3, and spoke of her skill.

It was proved in evidence, that the prisoner was with child by her husband's brother, and that she died after a miscarriage caused by drugs.

I have sentenced Musst. Bochun to a lesser punishment than the other prisoners, as she was a mere passive observer of what was going on, she took no steps to defeat the object of the other prisoners, however, and was clearly consenting to the deed.

Sentence passed by the lower court.—No. 3, to five years' imprisonment with labor suited to her sex, No. 4, to be imprisoned without irons for (3) years and to pay a fine of (20) Rs., on or before the 5th proximo, or in default of payment to labor, until the fine be paid, or the term of his sentence expire. No. 5, to be imprisoned for (6) months and to pay a fine of (10) Rs. on or before the 5th proximo, or in default of payment to labor until the fine be paid or the term of her sentence expire, and Nos. 6 and 7, to be imprisoned for (3) years and to pay a fine of (20) Rs. each, on or before the 5th proximo, or in default of payment to labor until the fine be paid or the term of their sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow and Mr. B. J. Colvin.) Musst. Puddo has appealed. In her petition of appeal, she has stated that she, at the bidding of No. 3, pulled up the root, which was used medicinally, but without knowing the purpose for which it was wanted. In her mofussil confession and in that before the magistrate, however, she allowed that she knew the object to be to procure abortion. We therefore reject the appeal.

PRESENT:

SIR R. BARLOW, BART., AND B. J. COLVIN, Esq., *Judges.*

GOVERNMENT

versus

RUSSOOL MAHOMED (No. 7,) POOSOORAM (No. 8.)
NETAI (No. 9, APPELLANT) AND FUKKEERCHAND (No. 10,
APPELLANT.) Rungpore.

1854

CRIME CHARGED.—1st count, dacoity in the house of Kisto Dass and plunder therefrom of property value at Rs. 71-12, with wounding of the said Kisto Dass; 2nd count, No. 7, is also charged with receiving and having in his possession property, knowing the same to have been obtained by the said dacoity. October 26.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. H. L. Dampier, officiating magistrate of Rungpore. The prisoners were acquitted, the evidence to their recognition being suspicious, and there being no corroboration of their mofussil confessions.

Tried before Mr. G. U. Yule, officiating sessions judge of Rungpore, on the 14th June, 1854.

Remarks by the officiating sessions judge—On the night of the 25th February last, the house of witness, No. 1, was entered by eight or ten dacoits with torches, *lattees*, &c., who seized him and his brother, preventing the former seeing who they were, broke open a chest and carried off property to the value of Rs. 71-12. On their departure, prisoner, No. 7, Russool Mahomed being somewhat behind the others, was observed by witness No. 1, who grappled with him and called for aid, which was immediately rendered by his brother, witness No. 2, who had begun to follow the dacoits, and by witness, No. 3, soon followed by witnesses, Nos. 4 and 5, and he was secured and taken to the house of witness No. 1, where he acknowledged that he had come for the purpose of committing a dacoity and named his companions, among whom were prisoners, No. 8, Poosooram, No. 9, Netai, and No. 10, Fukeerchand; next morning the chowkeedar, witness No. 18, reported the matter at the thannah, stating in his deposition taken at the time, that prisoner, No. 7, had been captured and had confessed and named his companions with many other particulars, of which he, the chowkeedar, only recollected that one Gokool (not committed) had been named and that the dacoits had assembled in the house of Netai, prisoner No. 9. On the police going to the spot, prisoner, No. 7, again confessed, inculcating prisoners, Nos. 8, 9 and 10, and he repeated his confession before the magistrate. The houses of the parties named by him were searched, without success, but the prisoners, Nos. 8, 9 and 10, confessed in the mofussil and No. 8 adhered to his confession before the magistrate, while Nos. 9 and

1854.

October 26.

Case of
NETAI and
others.

10 repeated theirs. Witness, No. 1, deposed in the mofussil that he recognised No. 9, alone, and that by his voice at the time of the dacoity. In the foudary court he named also No. 8 and others as recognised by him. Witness No. 2, said in the mofussil that he had recognised Nos. 9 and 10, by the torch-light, here he says Nos. 8 and 9, by their voices, their evidence consequently cannot be trusted on the point of recognition. Witness No. 3, has been consistent in alleging his recognition by the torch-light of prisoners, Nos. 9 and 10, Netai and Fukeerchand, as he met them when on hearing the noise he was running towards witness No. 1's house. In the mofussil and foudary, he named a third person also, who had not been committed.

The apprehension of Russool Mahomed, immediately after the dacoity, and his confession there are fully proved by witnesses, Nos. 1, 2, 3, 4, 5, 8, 18 and 19, and the mofussil confessions of all the prisoners and those at the foudary of Nos. 7 and 8 are duly proved.

All the prisoners at the sessions denied the charge, alleging enmity between the *jotedars* under whom witness No. 1 and they respectively hold, and that their confessions were extorted, the enmity alleged appears to have existed, but affords no ground for disbelieving the evidence. One witness, No. 24, asserts that he saw a burkundaz strike prisoner No. 8, and tell him to confess.

Russool Mahomed, prisoner No. 7, declares that he was stupified with *ganjah* and knew not what he was saying before the magistrate, that he had been to the market and was returning past witness No. 1's house, where that witness and others seized him. The improbability of this story is greatly increased by the circumstance that he was not known to the parties who seized him, having settled in the village from which he came to commit the dacoity only about six months before, as proved by his own witnesses, Nos. 20, 22 and 23.

No. 8, Poosooram, alleges that he made his foudary confession under the fear and prompting of a burkundaz, who was close to him all the time. This is disproved by the witnesses to his confession Nos. 16 and 17, who, although not specially asked regarding the burkundaz, depose that prisoner's confession was free and uninfluenced. The details in his confession, and his answers to questions are also inconsistent with the idea of their being prompted or extorted.

A good character is given to prisoners, Nos. 8, 9 and 10, by their witnesses.

To recapitulate, against Russool Mahomed, No. 7, there is the proof of his capture and confession at the time of the dacoity, and his confessions afterwards to the police and magistrate.

Against Poosooram, No. 8, his being named by No. 7, his apprehension in consequence and his confessions to the police and magistrate.

Against Netai, No. 9, and Fukeerchand, No. 10, there is their recognition at the time by witness No. 3, the truth of whose testimony is corroborated by their own confessions in the mofussil by the confessions of Nos. 7 and 8, in the mofussil and foudjary.

I convicted all the prisoners and sentenced them as mentioned. I tried the case alone under Act XXIV. of 1843.

Sentence passed by the lower court.—Each to be imprisoned with labor and irons for five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow and Mr. B. J. Colvin.) The prisoners Nos. 9 and 10, only appealed; we are not satisfied with the proof upon which the sessions judge relies. The witness Khugessur was not examined before the police on the point of *recognition* of the prisoners till the 1st March, the dacoity took place on the night of the 25th February, and though Khugessur was present at the search of the houses of the prisoners on the 27th February, he was then silent as to having recognised them in the act. Although they were named on the spot by a prisoner No. 7, who has not appealed, and they themselves confessed in the mofussil, still such a confession unsupported by good evidence is not in our judgment sufficient for a conviction. We acquit and release them.

1854.

October 26.

Case of
NETAI and
others

PRESENT:

H. T. RAIKES, Esq., *Judge.*

J. H. PATTON, Esq., *Officiating Judge.*

GOVERNMENT AND RAMMONEY

versus

JUGGERNATH BURNICK (No. 1,) RAMDOSS DOSS (No. 2,) KASHEFNATH BURNICK (No. 3,) RAMJOY DOSS BHOOEYAH (No. 4,) AND RAMJOY DOSS (No. 5, APPELLANT.)

Tipperah.

CRIME CHARGED.—Nos. 1 to 4, wilful murder of prosecutor's brother Ramkannye Burnick, No. 5, being accessory after the fact to the above murder.

1854.

October 27.

CRIME ESTABLISHED.—Nos. 1 to 4, culpable homicide of Ramkannye Burnick brother of the prosecutor, No. 5, accessory after the fact to the above homicide.

Case of
RAMJOY DOSS
and others.

Committing Officer.—Mr. F. B. Simson, officiating joint-magistrate of Noacolly.

In a case of
culpable homicide one prisoner convicted

Tried before Mr. H. C. Halkett, officiating sessions judge of Tipperah, on the 14th August, 1854.

1854.

October 27.

Case of
RAMJOY Doss
and others.

ed as an ac-
cessary after
the fact appeal-
ed. His guilt
being estab-
lished by his
own confes-
sions, the ap-
peal was re-
jected.

Remarks by the officiating sessions judge.—The prosecutor in this case lives in the village of Sonahpoore in thannah Ameergong. On the night of the 28th of Assaur, 1261, B. S. he was informed by his brother, the deceased Ramkannye, that he was about to go on some business to the house of Phezooram Dhoo-bee, one of his neighbours. The next morning when he rose he missed his brother from his usual place, but supposed that he had gone, as he had said he would, to the Dhoo-bee's house. The prosecutor then himself went to a *haut* at some distance. He did not return home until the Thursday evening, when he was much alarmed by hearing from his sister, Chunder Kullah, that no news had been heard of their brother since he had left home last.

His inquiries about his brother proving fruitless, he informed the village chowkeedar of the matter and went with him to the Ameergong thannah, where he stated his suspicion that his brother had been made away with by the first four prisoners, who, he well knew, were bitter enemies of his brother.

The parties were thereon arrested, when prisoners, Juggernath No. 1, and Ramdoss No. 2, confessed that they had beaten and kicked the deceased, and that he had died under their hands from the ill-treatment he had received.

As their confessions involved the 5th prisoner Ramjoy Doss, as an accessory after the fact, he also was arrested, and acknowledged his having been aware of the deed, and having afterwards assisted the other four prisoners to conceal the body. The information supplied by him ultimately led to the discovery of the body, which was found lying under a tree in a spot near the house of a man named Rampershad living in mouzah Kollessur. The finding of the body not taking place until twelve days after the man's death, little more than a skeleton remained. The deceased was a man in the prime of life, about twenty-seven or twenty-eight years, and was in perfect health at the time of his disappearance.

Before the magistrate prisoners, Juggernath No. 1, Ramdoss No. 2, and Ramjoy Doss No. 5, repeated their confessions.

At the sessions, all the prisoners pleaded *not* guilty.

The evidence of four persons, who were witnesses to the fact, clearly proved the main charges against the prisoners. Three women, witnesses Nos. 1 to 3, living in the same village with the prisoners, and who themselves occupied the same *baree*, depose distinctly to having witnessed the assault by the four prisoners upon the deceased, who was thrown down by them and beaten and kicked when in that position. This occurred about midnight of the same day on which deceased had left his house, in the manner detailed above. The night was a moonlight one, and they could see clearly what passed. The women screamed out on seeing what happened, when the prisoners

1854.

October 27.

Case of
RAMJOY DOSS
and others.

abused and threatened them, compelling them to silence. The four prisoners then took up the body, which the eye-witnesses all state being heavy like that of a dead person, and carried it off in an easterly direction towards the hills. These witnesses state further, that Gooroodoss Doss, witness No. 4, the brother of the prisoner Ramdoss (No. 2,) came up to where the prisoners were standing, after the assault, and spoke to the prisoners. This man was ultimately directed by the joint-magistrate to be retained as a witness, as his evidence was most necessary for the elucidation of the case. In his evidence he states, that he had seen the prisoners in consultation together, and had heard from his brother, prisoner Ramdoss Doss (No. 2,) that they had been consulting about their design to kill the deceased. The woman Somittra, cousin of the above witness, and who lives in the same house with him and prisoner Ramdoss Doss (No. 2,) states in her evidence that on the day in question, she saw the prisoner Juggernath take Ramdoss Doss (prisoner No. 2,) aside and speak to him in private, as if in consultation. Labonce Doss, another witness (No. 20,) residing in mouzah Kollessur, states that he found a body lying in the paddy field belonging to him, and that he and his neighbours Ramgopaul and Rampershad (witnesses Nos. 21 and 22,) recognized it as being the body of Ramkannye, whom they had known previously. Afraid of being drawn into some trouble from the body being found near their dwellings, they aided Labonee Doss (witness No. 20,) to remove the body from where it was found by them, to the spot where it was afterwards, on their information, found by the police. The spot where the body was found by these witnesses, being that where it was first thrown by the prisoners, was about two *coss* from the house of the deceased, and the place where it subsequently was discovered, on the information by the police, was about half a mile further off.

That there had been enmity for some time past, between the first four prisoners and the deceased, is clearly proved by the evidence of several witnesses. The prisoner Ramjoy Doss (No. 4,) had an illicit connexion with the sister of the deceased, who had had a quarrel with him on that account, and had beaten him. The deceased had also quarrelled and fought with Kasheenath (prisoner No. 3,) with whom he had a disagreement about his not affording proper support to his (deceased's) niece, the woman Jyekallee, who was married to Kasheenath's brother Ooma Kanth, then absent at Akyab. It further appears that the deceased had an intrigue with the woman Razee, the wife of a man named Ramdoss Potdar. This woman had afterwards for her lover, the prisoner Juggernath, so that, *that* person also nourished ill-will toward him. The fourth prisoner, Ramjoy Doss Bhooyeah, had carried on an intrigue with the deceased's sister, Chunder Kullah, and there was ill-will between them on that account.

1854.

October 27.

Case of
RAMJOY DOSS
and others.

A neighbour of the prisoners named Komul Doss, produced a *tauveez* or armlet given to him by the prisoner Ram Doss two or three days before the arrival of the darogah to investigate the case. He had been requested by the prisoner to keep it for him. This *tauveez* was recognized and sworn to by two witnesses, as well as by the prosecutor, as being the property of the deceased Ramkannye.

The confessions of the prisoners Juggernath Burnick, (No. 1,) Ramdoss Doss, (No. 2,) and Kasheenath Burnick, (No. 3,) are attested by the witnesses, in whose presence they were taken in the mofussil and before the magistrate.

Of the manner in which the deceased met his death, there can exist no doubt whatever. The confession of three prisoners, as well as the positive and direct evidence of eye-witnesses sufficiently attest the fact, but nothing elicited in the case can sustain a charge of wilful murder against the prisoners. Some weight may be attached to the circumstance of the consultation of the prisoners before hand as showing malice aforethought, and, as stated by one witness, Gooroodoss Doss, (No. 4,) a deliberate design to put him to death, but this man's evidence goes no further than that he had *heard* from his brother Ramdoss Doss, (prisoner No. 2,) that the other prisoners had designed to kill the deceased and had wished him to join them. This even if admitted to be true, would not affect the other prisoners, being only the allegation at self id hand of one of them. The confessing prisoners, Juggernath Burnick, (No. 1,) and Ramdoss Doss, (No. 2,) make no mention of their having entertained any further designs against the deceased than to give him a beating; and this assertion is supported by the facts, for, had the prisoners really cherished the intention of putting him to death, they would have used very different means to effect their purpose, than what their own avowal and the evidence of the eye-witnesses show that they actually employed. No weapons of any kind were used; which would certainly not have been the case had they designed to murder the man, and all the evidence tends to show that they intended to effect nothing more than what some of themselves allege, viz., to inflict a beating upon a man towards whom they bore a grudge and jealousy. In this, as in many other similar cases, the result went further than what was ever designed or contemplated by the actors.

In concurrence with the *futwa* of the law officer, who held that the act of the prisoners amounted to culpable homicide, I sentenced Juggernath Burnick, (No. 1,) Ramdoss Doss, (No. 2,) Kasheenath Burnick, (No. 3,) and Ramjoydoss Bhooyeah (No. 4,) as principals, to five years' imprisonment with labor in irons, and Ramjoy Doss (prisoner No. 5,) as an accessory after the fact, to three years' imprisonment, and to pay a fine of 30 Rs., otherwise to labor until the expiry of the term of his sentence, or until payment of the fine.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The only prisoner who has appealed from the sentence passed by the sessions judge is Ramjoy Doss, No. 5, convicted of being an accessory after the fact to culpable homicide.

This prisoner had assisted the principal offenders in concealing the body, and made a statement to that effect before the police on his apprehension. This was repeated by him in the presence of witnesses shortly afterwards, and on his appearance before the magistrate he again confessed. No doubt can be entertained of the truth and genuineness of his admissions, for he has allowed in his appeal that they were voluntarily made in the hope of being admitted as a witness, and as the purport of his statements is sufficient to convict him of having aided the principal offenders in concealing the body of a man whose death he believed had been caused by violence, we see no reason to interfere with the conviction and sentence. This appeal is therefore rejected.

1854.

October 27.

Case of
RAMJOY DOSS
and others.

PRESENT:

B. J. COLVIN, Esq., Judge.

GOVERNMENT AND DOORGADOSS

versus

SHAMA MUSSULMAN.

24-Pergunnahs.

1854.

October 27.

Case of
SHAMA MUSSULMAN.

CRIME CHARGED.—1st count, dacoity and plunder of property to the value of Co.'s Rs. 125-7; 2nd count, having in his possession part of the plundered property knowing it to have been acquired by dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer.—Mr. J. R. Ward, officiating magistrate of Howrah.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 12th July, 1854.

Remarks by the officiating additional sessions judge.—A dacoity was committed in the house of the prosecutor on the night of the 27th April, 1854, and property to the value of 125 Rs. carried off. The robbers broke into the house about midnight with lighted torches. Six persons variously armed entered and began to force open the trunks and boxes with hatchets. Some stripped the women and children of the ornaments they had on, after which they departed. The villagers collected and made after the dacoits, when the prisoner was confronted by the chowkeedar of the village, knocked down and secured with certain

The prisoner's appeal was rejected, the pleas urged in it being groundless.

1854.

October 27.

Case of
SHAMA MUS-
SULMAN.

articles of the plundered property, a *ghurra* and two *tusseelas*. Some property was also found in a plantain garden, thrown there and abandoned by the dacoits in their flight. The prisoner when taken before the police confessed that he had taken part in the dacoity, and the property found with him proved to be part of the plunder. He denied the charge before this court, and pleaded an unlawful arrest, but could adduce no proof of the plea. Some of the witnesses he called to character stated that he bore a good character and worked for his livelihood.

Sentence passed by the lower court.—To be imprisoned with labor and irons for fourteen (14) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) The prisoner's story, that he was coming to Calcutta early in the morning with tape to sell when he was seized by the chowkeedar, is very improbable. In his petition of appeal too he has stated that he confessed at the thannah from ill-treatment and being kept without food for three days; but these alleged circumstances are disproved by the record, which shews that he was sent on the very day of his apprehension, viz., 28th April to the magistrate, who took his answer on the following day, when the effects of any ill-treatment, if really practised, would have been visible. *Reject the appeal.*

PRESENT:

H. T. RAIKES, Esq., *Judge, and*J. H. PATTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

Tipperah.

TUJUMUDDY (No. 1,) AND HYDER ALLY (No. 2.)

1854.

October 27.

Case of
TUJUMUDDY
and another.

Conviction
and sentence
passed by the
sessions judge
in a case of
wilful perjury,
upheld in ap-
peal.

CRIME CHARGED.—No. 1, perjury in having on the 27th April, 1854, corresponding with 15th Bysack, 1261, B. S. deposed under a solemn declaration taken instead of an oath, before the officiating joint-magistrate of Noacolly in a case in which Hyder Ally was plaintiff, that "on the 18th Chyte last, about four *dunds* before night whilst returning from Chundiah's hât he saw, Tujumuddy, and Dorap, and Hyder Ally, and Imam-uddy, and Azeemuddin assaulting the plaintiff with blows at the instigation of Sumiruddy and Mofeezuddy," such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case. No. 2, 1st count, perjury in having on the 27th April, 1854, corresponding with the 15th of Bysack, 1261, B. S. deposed under a solemn declara-

tion taken instead of an oath, before the officiating joint-magistrate of Noacolly, that "on Thursday the 18th of Chyte, four dunds before night, he was feeding cattle to the north of his house, Mofeezuddy, Tujumuddy, and Sumiruddy, and Dorap, Azeemuddin and Imamuddy, and Hyder Ally, and about others ten or twelve men, inhabitants of Nuldugee, Motilal, came and by order of Sumiruddy and Mofeezuddy all the other defendants assaulted him, such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case; 2nd count, subornation of perjury in causing Tujumuddy, prisoner No. 1, to give the abovementioned false evidence.

CRIME ESTABLISHED.—Wilful perjury.

• Committing Officer.—Mr. F. B. Simpson, officiating joint-magistrate of Noacolly.

Tried before Mr. H. C. Halkett, officiating sessions judge of Tipperah, on the 14th August, 1854.

Remarks by the officiating sessions judge.—On the 27th April last, the prisoner Tujumuddy gave evidence in the court of the joint-magistrate of Noacolly, in a case brought by the other prisoner, Hyder Ally, (No. 2.) [redacted] man named Sumiruddy and others for assault, &c. [redacted] of witness, he swore positively to having been present at the time and place where the assault was alleged to [redacted] occurred, viz. on the 18th Chyte, corresponding with the 30th March, at a village in Dukhin Shahbazpore, and that he had witnessed the whole affair complained of.

It appeared, however, that this very man Tujumuddy had appeared as a witness in another case of petty assault, in which a man Imamuddy was plaintiff, and gave evidence therein in the joint-magistrate's court on the 17th Chyte, or 29th March. Now as it was absolutely impossible that the prisoner could have been present on the occurrence of the first assault which occurred, or was stated to have occurred, on the 18th Chyte, at a place more than two days' journey from the joint-magistrate's court, where it is certain that he had delivered his evidence in the other case on the 17th Chyte or just one day before, the prisoner must have been guilty of flagrant perjury in the first instance.

The prisoner confessed in his answer, both before the joint-magistrate and at the sessions, that he had given false evidence in the first case, having been tutored to say by others what he had given as evidence in Hyder Ally's case.

Hyder Ally pleaded *not guilty*.

As to the guilt of the first prisoner, Tujumuddy, there can be no doubt. He admits having given false evidence, and independent of his confession, the circumstances of the case are too clearly against him to admit of any denial availing him. With

1854.

October 27.

Case of
Tujumuddy
and another.

1854.

October 27.

Case of
Tujumuddy
and another.

reference to the other prisoner, Hyder Ally, the fact of his being guilty of subornation of perjury, is no less clear. The only person to be benefited by the proving of the assault case was himself, the other prisoner having no interest in the matter, so that it is clear that he must have appeared and delivered evidence on the inducement of another, and that other, the plaintiff in the case.

By the evidence of Bonah Gazi peadah (No. 4.) and Issur Chunder Mitter, Nazir Buxshee, it is clearly proved that Hyder Ally had set down Tujumuddy as one of his witnesses, and had caused him to be *subpœnaed* as such. He accompanied the peadah into the mofussil and pointed out to him the man, Tujumuddy, as the witness whose evidence he required, and accompanied him to the Nizarut.

When the case came on before the joint-magistrate, Hyder Ally declared Tujumuddy to be one of his witnesses; and it is proved by the deposition-writer that the evidence of Tujumuddy was taken down in court, in the hearing and in the presence of the plaintiff, Hyder Ally. All the above facts, with reference to both prisoners, were fully proved by the examination of the papers of the assault, ^{magistrate} effects of, from the inspection of the Nazir's book.

In conformity with the ^{able} ~~able~~ the law officer, who declared that perjury had been fully ~~proved~~ ^{proved} against Tujumuddy, and subornation of perjury against Hyder Ally, I sentenced both prisoners to be imprisoned with hard labor in irons for a period of (5) five years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The prisoner Tujumuddy has been convicted of perjury, and the prisoner Hyder Ally of suborning him as a witness in his own behalf. We see no reason to interfere with these convictions, the prisoner Tujumuddy has admitted, from the first, that he gave false evidence in Hyder's case at the instigation of others, and the only defence set up by Hyder has been that he heard that a man of the name of the other prisoner had witnessed the assault made upon himself, and had questioned the prisoner as to his knowledge of that matter and summoned him as able to support his charge in consequence, but that three men of the same name resided in the village where the prisoner Tujumuddy lived, and he may have summoned the wrong person. This defence cannot be received in the face of the fact that the prisoner Tujumuddy actually gave the evidence required of him by Hyder, which sufficiently points him out to be the individual sought by Hyder, and as we consider the reasoning of the sessions judge is fully justified by the facts before him, which warrant a strong presumption of the prisoner's guilt, we reject the appeal and confirm the sentences on both prisoners.

PRESENT :

H. T. RAIKES, Esq., *Judge, and*
J. H. PATTON, Esq., *Officiating Judge.*

ACKBUR BHOOYA AND LOCHUN SOOTHAR,

versus

NUBOOLLAH.

Tipperah.

1854.

October 27.

Case of
NUBOOLLAH.

CRIME CHARGED.—1st Count, stealing two cows, valued 26 Rs., viz., one belonging to the prosecutor, Ackbur Bhooya, valued 12 Rs. and another belonging to the prosecutor, Lochun Soothar, valued 14 Rs.; 2nd count, knowingly keeping in his possession the above stolen cattle.

CRIME ESTABLISHED.—Stealing two cows, valued at 26 Rs. belonging to the prosecutors.

Committing Officer.—Mr. J. W. Dalrymple, joint-magistrate of Noacolly.

Tried before Mr. H. C. Halkett, officiating sessions judge of Tipperah.

Remarks by the officiating judge.—The prisoner is charged 1st, with stealing the cows, one valued 12 Rs. the property of Ackbur, and the other valued 14 Rs. belonging to Lochun; 2ndly, with keeping the same in his possession knowing them to have been stolen.

The prisoner, an old offender, was convicted of cattle-stealing and sentenced to five years' imprisonment.

Appeal rejected.

The circumstances of this case are as follow: The 1st prosecutor, Ackbur, who lives in mouzah Culchosali, pergunnah Konchunpore, is owner of several cows, all of which he had fastened up in the cow-house on the evening of the 23rd June, corresponding with the 10th Assar, before last. In the morning when he went to look at the cattle, he found that one of them was missing, the rest being all safe as he had left them the evening before. Shortly after this he heard that his neighbour Lochun, the other prosecutor, had also had one of his cows stolen on the very same night that he had lost his own. Both the owners searched in every direction, but could find no traces of the missing cattle. When thus engaged, the prosecutor Ackbur happened to meet a man named Mohurum peadah, from whom he received the intelligence that a person by name Nuboollah, residing in Dukhin Raepore had recently been convicted and sentenced to imprisonment for cattle-stealing, and that as he knew the culprit still to have several other cows at his place of abode, he suggested the probability of one or more of these being the stolen property in question, and advised him to go to Dukhin Raepore, and ascertain the fact for himself. On arriving at the prisoner's house, the prosecutor found the servant of the prisoner by name Thakooree, driving out some cows to pas-

1854.

October 27.

Case of
NUBOOLLAH

ture, and he immediately recognized his own as well as his neighbour Lochun's missing cows among the number. Lochun, also, on receiving this intelligence proceeded to the spot and recognized and claimed his own missing property. The mother and servant of the prisoner on being questioned declared that they had been purchased by him, but they neither stated when, nor from whom, nor for what price they had been bought, nor is their statement borne out by any witnesses. The story of both prosecutors is fully substantiated in every particular by the two neighbours, whom Ackbur took with him, when he went to search at the prisoner's abode. The cattle were also proved to be the plaintiffs' property. The witnesses all state what is, indeed, otherwise sufficiently proved, that the prisoner is a notoriously bad character, and well known as such in his own neighbourhood.

He had been since the month of August, subsequent to the occurrence of the theft, in the instance abovementioned, actually undergoing a sentence of imprisonment for cattle-stealing in another case, and had also been once before sentenced to a year's imprisonment for a similar offence.

The prisoner pleaded *ignorance*, and stated that he had purchased the two cows on effects of others at different times, and further declared that he had no witnesses to prove the fact. The first witness brought forward, however, denying all knowledge of the transaction, the prisoner declined offering any further evidence.

The *futwa* of the law officer declared the charge fully proved against the prisoner, and in concurrence with the same, I sentenced him to five years' imprisonment, with hard labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) It is proved and admitted by the prisoner that the cows were in his possession, and this fact, coupled with his inability to prove his statement that he purchased the cows from the prosecutors, affords every reasonable presumption of his guilt.

We see no reason to interfere with the conviction and reject this appeal.

PRESENT:

B. J. COLVIN, Esq., Judge.

GOVERNMENT AND SHEIKH GHOLAM NUBBEE, &c.

versus

SHEIKH KHOAUJ.

Dacca.

1854.

October 27.

Case of
SHEIKH KHO-
AUJ.

CRIME CHARGED.—Assembling in an armed body and attacking and plundering at night the houses of the prosecutors, and carrying off by force Nyah Beebee *alias* Bengalee Khatoon and Tecun Beebee and Hingun Beebee and the boy, Fyzoo.

CRIME ESTABLISHED.—Assembling in an armed body and attacking and plundering the houses of the prosecutors and carrying off by force Nyah Beebee *alias* Bengalee Khatoon and others.

Committing Officer.—Mr. C. W. Mackillop, magistrate of Dacca.

Tried before Mr. S. Bowring, sessions judge of Dacca, on the 14th August, 1854.

Remarks by the sessions.—The prisoner was originally tried in this zillah, and on the 15th of last, the sudder Court sentenced the prisoners then present. The prisoner has since been apprehended.

The appeal of the prisoner was rejected, the proof of his guilt being satisfactory.

* Nos. 1, 3 and 4.

Witnesses* proved that he had taken part in the attack on the houses of the prosecutors. The prisoner pleaded an *alibi*, but nothing was established in his favor by the witnesses he called.

The law officer convicted the prisoner of the crime charged in the calendar.

I concurred in the verdict and pronounced the same sentence as that passed on the prisoners formerly convicted.

Sentence passed by the lower court.—To be imprisoned for the period of seven (7) years with labor in irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. B. J. Colvin.) The particulars of the former trial will be found at page 587 of the Nizamut Report for May last.

The prisoner was mentioned by the witnesses from the first and before his apprehension. He was a servant of Jumalunlyle, the principal in the outrage. Seeing no reason to interfere with the conviction or sentence, I reject the appeal.

PRESENT :

H. T. RAIKES, Esq., *Judge, and*
J. H. PATTON, Esq., *Officiating Judge.*

GOVERNMENT AND SHUNKER CHUNG

versus

RAMNARAIN CHUNG.

Mymensingh.

1854.

October 27.

Case of
RAMNARAIN
CHUNG.

CRIME CHARGED.—Wilful murder of Doorga Chundalnee.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer.—Mr. R. Alexander, magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, sessions judge of Mymensingh, on the 21st July, 1854.

Remarks by the sessions judge.—From the admission of the prisoner and the statement of the witnesses, it appears that on the night of the occurrence, as the prisoner and his cousin, witness No. 1, were at the evening meal, he observed that there was too much salt in one of the dishes, and he became enraged, and as his wife, the deceased, was stooping down to serve him, he gave her a severe blow with his left hand on the right side of her temple, which effected her death. Afterwards, notwithstanding his efforts to save her, she died. The civil assistant surgeon was unable to examine the corpse from the advanced state of decomposition, but he stated the effusion might have existed on the brain, though he could not observe it, or that the state of the brain might have been produced from fever, rendering it easily disorganized by a slight concussion; in such a case a severe blow with the open hand might have produced a fatal effect. The prisoner throughout admitted having struck his wife in the manner described, and offered no defence. The *futwa* of the law officer convicted him of culpable homicide, in which I concurred.

Sentence passed by the lower court.—Sentenced to be imprisoned without irons for the period of four years, and to pay a fine of 30 Rs. on or before the 21st August, 1854, on default of payment to labor until the fine be paid or the sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Messrs. H. T. Raikes and J. H. Patton.) The prisoner admits the crime and makes no defence. Taking the case as stated by the judge on his remarks on the trial, we find that the blow, which accidentally proved fatal, was given without any intent on the part of the prisoner to seriously injure his wife. Although concurring in the conviction, we think the sentence of four years with fine passed on the prisoner is, under the circumstances, excessive and reduce it to one year's simple imprisonment.

Prisoner convicted of the culpable homicide of his wife, but the fatal blow having been struck without any serious intent to injure, became senseless and punishable reduced to one year's imprisonment in appeal.

PRESENT :

SIR R. BARLOW, BART., AND B. J. COLVIN, Esq., *Judges.*

GOVERNMENT

versus

MUSST. KAOOTANEE.

Rungpore.

1854.

CRIME CHARGED.—1st count, wilful murder of Kandooree, her daughter; 2nd count, being present, aiding and abetting the above crime; 3rd count, aiding and abetting in the suicide of Musst. Panbee; 4th count, attempt to commit suicide.

Committing Officer.—Mr. A. W. Russell, magistrate of Rungpore.

Tried before Mr. G. U. Yule, sitting sessions judge of Rungpore, on the 19th September, 1854.

Remarks by the sessions judge.—About midnight of the 20th June last, Hasil, witness No. 9, awoke and missing his wife and child, who had gone to sleep on the same mat with him, called out to his brother, Kashee, witness No. 11, who was in an adjoining hut, Kashee awoke and his wife also. In the morning search was made about Hasil's house till Haooreea, witness No. 13, came and told Hasil that his wife, Kaotanee, prisoner was in informant's house, having come there the night with the clothes dripping wet, saying she had run on account of being beaten. Hasil went and fetched her, on asking what had become of their child, Kandooree, and of Kashee's wife, Panbee, she said they had gone out together, Panbee carrying the child, and in the dark she had missed them and gone on herself to Haooreea's house. Soon after this, a body was seen by witnesses, Nos. 2 and 4, in a tank, two hundred and fifty or three hundred yards from Hasil's house, which was recognized to be that of Panbee, and the child's body was also found. No further measures were taken for their preservation. Notice however was sent to the thannah, the darogah came out on the following day, and next day he took the deposition on solemn affirmation of Kaotanee, upon whom, it would appear, suspicion had not hitherto rested. In consequence of her statement, he at once took her confession as a prisoner. This confession is much less in detail than the deposition, but the main facts are distinctly stated and agree with her subsequent confession to the magistrate. The following is an abstract of these confessions. Her husband treated her and her child badly as his brother, Kashee, did his wife, Panbee, the deceased, the day before the occurrence they had been maltreated, so they agreed they would stand it no longer, and Panbee remarked that if prisoner's daughter was ill-treated when the mother was alive

October 28,

Case of
MUSSUMUT
KAOOTANEE.

The prisoner was acquitted, notwithstanding her alleged confessions, the statements contained in them differing, and there being no proof which story is true, while she was no evidence of her guilt.

1854.

October 28.

Case of
MUSSUMUT
KAOTANEZ.

what would she be when the mother was dead, so at midnight, they went out together, Panbee carrying the child (who slept with Panbee according to prisoner) and proceeded to the tank, where the bodies were subsequently found. There Panbee put a knife, which she had brought with her into prisoner's hand for the purpose of killing the child, an infant, little more than twelve month's old, but the mother could not with her own hand murder her offspring, her eyes filled with tears and her body shook, so Panbee took the knife, cut the child's throat, threw her into the water, and jumped in herself, still holding the knife. The prisoner then walked into the water, but her heart failed her, she came out and went to Haooreea's house.

Both confessions bear, I think, internal marks of truth and the attesting witnesses* depose* that they were voluntarily given. That before the mat^{ant} was taken down, on the 30th Jun^{ant}, and duly certified, a few questions were asked of the prisoner on a subsequent day, and her answers indirectly show that her confession was voluntary, this examination is, I think, to have been headed "Effects of the Mat^{ant}." On the trial at sessions, the prisoner de^{ant} that she, being ill-treated by her husbands, Panbee proposed to run away, which she did to, as they would only be sent back again; that Panbee took the child and went to the tank, and laid it down on the bank; that Panbee slipped and fell in, and the child going to the edge after her fell in too; and that she, the prisoner, was too far off to help. This story disproves itself, for if too far off to help, she must at midnight in the then age of the moon have been too far off to see, and besides, if they did not go to the bank to commit murder and suicide, for what purpose were they there?

When the darogah examined the bodies, that of the child was almost entirely devoured by jackals, the head and part of the neck and limbs only remained, he reports that he thinks the mark of a cut with a knife may be observed, but he is evidently doubtful, the villagers also did not examine the bodies when first found, and the civil surgeon could not, from the advanced state of decomposition they were in when sent to him. The knife also was not found, so that two important circumstances, by which the truth of the confession might have been tested, have not become available. I see no reason however for doubting the confession, the fact of the murder having been perpetrated in the exact mode described by prisoner is not proved, but that the child was murdered, either by cutting its throat or drowning, is clear. The law officer convicted the prisoner on the 2nd, 3rd and 4th counts, and I concurred, but in awarding pun-

1854.

October 28.

Case of
MUSSUMUT
KAGOTANEE.

ishment, the last two charges may be left out of consideration, for they cannot add to the heinousness of the guilt in the 2nd count. Prisoner has always alleged bad treatment by her husband, as the cause of the crime, the witnesses questioned on this point denied it in an equivocal way, and from the admission of No. 4, uncle of prisoner's husband, that people said Hasil beat his wife and did not give her enough to eat, I believe that she was ill-used, on the other hand her husband says, she is unchaste and has always been in the habit of running away; be this as it may, the ill-usage she states herself to have received from her husband is no extenuation of her guilt in aiding the cold-blooded murder of her own child, considering however that she was not the actual perpetrator of the crime, and that she seems to have been under the influence of Panbee, who suggested the murder, carried the child to the tank (taking a knife with her without, I think, prisoner's knowledge) and there murdered it after the mother had refused, a capital offence is not called for, and I beg to recommend that she be confined for life in the zillah jail with labor suited to her sex.

Remarks by the Nizamut Adawlut. Mr R. Barlow, Bart., and Mr. B. J. Colville, Esq. attached the spot where this murder was committed. On the 21st of June, the bodies were found on the 21st. The offence of violence having been committed by the body of the deceased, it is said to have been killed by Panbee, who is said to have cut it before she herself jumped into the tank and was drowned. The prisoner whose statement was first taken on the 21st of July, on its being complete at once made a defendant, and is said to have confessed that she accompanied Panbee to the tank, where she refused to kill the child at Panbee's solicitation, but allowed her to cut its throat. Were this proved, an offence of a very serious nature would be established against her, but as several stories vary much, and there is no satisfactory proof, as to which of them may be held to be true. The length of time, which elapsed between the arrival of the police and the period at which the prisoner's answer was taken, is a circumstance of great suspicion, the instrument, with which the child is said to have been killed, has not been produced and the darogah should have referred to the magistrate before, (having once taken her statement,) he made the prisoner a defendant.

We are strongly of opinion that the real facts of this case have not been developed, and in the absence of legal proof, we are bound to acquit the prisoner.

TABLE OF CASES.

REGULAR CASES.

<i>Sheikh, Major Ali v. Izat Ali and others.</i>	
<i>Widow's suit for, without mention of any specific sum, its recovery held barred, Circular Order 11th Jan. 1839, para 6,</i>	303
<i>Jugeshur Dheeka Chowdhree and others v. Kaleschurn Nales Ruttun.</i>	
<i>Claim to surplus moneys profits, dismissed for want of proof,</i>	305
<i>Brijnath Paul and others v. Buddun Chunder Mundul and others.</i>	
<i>Debt on bond. Claim lost by lapse of time, Section 14, Regulation 3, 1793,</i>	312
<i>Annund Mye Dutt v. Ramjee Mundul and others.</i>	
<i>Auction sale. Suit by defaulting putnendar, claiming the tenure under a benames purchase, dismissed as opposed to Section 9, Regulation 8, 1819,</i>	313
<i>Babi Tajun v. Sumramooddeen and others.</i>	
<i>Bibi Tajun v. Bolakee Lal and another.</i>	
<i>Mortgage, suit for foreclosure of, decreed. An alibi being proved on the recorded date of a deed of sale, it was held to be false, and a mocrurree tenure, sought to be cancelled under it, disallowed,</i>	315-316
<i>Musst. Bodh Kowaree and another v. Mod Nurain Singh.</i>	
<i>Suit for possession of land with moneys profits, decreed on proof of right under a tukaseemnameh,</i>	318
<i>Baboo Chedee Lal v. William Robert Jones.</i>	
<i>Indigo. Damages for breach of contract to supply seed,</i>	321
<i>Tarnae Chunder Fukrasee and others v. Mr. Elias Marcus.</i>	
<i>Damages for indigo crop, remanded for local enquiry,</i>	325
<i>Musst. Oma Chowdhraim and another v. Musst. Indur Munee Chowdhraim.</i>	
<i>Held that the ground of action being one, a suit can be entertained, notwithstanding that distinct claims be set up by different defendants; in other words, the validity of a plaint is not affected by the number of issues in defence. A Hindoo widow can alienate lands to pay her husband's debts without consent of heirs, and such sale, even without possession, valid</i>	326
<i>Musst. Jye Kowur v. Musst. Lakhputtee Kowur.</i>	
<i>A sale of lands, without written powers to sell, upheld on proof of the owner being present at the transaction and consenting to it,</i>	332
<i>Alexander Ismail v. Syed Abdoolah.</i>	
<i>Appeal admitted notwithstanding lapse (Construction, 10th,) and claim for a sum of money against one alleged to be an executor, dismissed in the absence of proof of such trust,</i>	334

Ranee Hursoondree Dibbea v. Rajah Bishennath Singh.	
<i>Family Usage. Succession to rajgee governed by,</i>	339
Bana Kowur and another v. Asmun Kowur.	
<i>Remanded for further enquiry, as to liability of certain parties for arrears of rent due on a farm,</i>	342
Shah Abdoul Kurreem v. Kunhyah Sahoo and another.	
<i>A bond, assigning possession of a farm until payment of a loan, upheld literally, and lender not allowed to void the stipulation,</i>	343
Sheo Gholam Sahoo v. Mohummud Kazim Ali Khan.	
<i>A vendor cannot rescind a contract and re-sell goods (saltpetre in this instance) a penalty being recoverable from vendee for breach of the same : damages against vendor,</i>	345
Rajah Shah Ukbur Hosein v. Collector of Cuttack.	
<i>Sale for arrears of revenue not liable to reversal on pleas not filed in time, Section 25, Act 12, 1841,</i>	348
Bibi Mariam Cachic Mackertich v. Joachim Gregory and others	
<i>Payment of a money legacy adjudged with interest from date of action to that of liquidation,</i>	350
Gobind Das Gosain v. Nurkoo Sahoo.	
<i>Default, reasons for, not having been taken (Clause 1, Section 46, Regulation 23, 1814,) and none assigned for dismissing in toto a claim admitted in part, the decision of lower court annulled and case remanded,</i>	351
Tara Purshad Raee Chowdhree v. Doorga Purshad Raee Chowdhree.	
<i>Interest, separate claim for before issue of Circular Order No. 29, 11th January 1829, adjudged from institution of first suit,</i>	352
Bhuwanee Churn Mitr v. Jykishen Mitr and others claims.	
<i>Held, on a review of judgment, that claims to immovable property, situated in the mofussil, must be tried by the law of the place in which the property is situated,</i>	354
Collector of Bhagulpore v. Shewuk Ram.	
<i>Claim to malikana lost by lapse of time,</i>	367
Andrew Crawford and others v. Muha Rajah Roodur Singh.	
<i>Lease of a farm voided, because sub-let to indigo planters in violation of express compact,</i>	369
Dya Mye Chowdhraim and another v. Tara Purshad Raee and another.	
<i>Mesne profits accruing before decision under Act 4, 1840, and subsequent thereto may be sued for together,</i>	371
Moorut Singh v. Kashee Purshad.	
<i>Assessment, enhanced rates, under express agreement, adjudged without prior notice Section 9, Regulation 5, 1812,</i>	374
Bishen Soonduree Dibbea and another v. Aga Mohummud Kamel.	
<i>A deed of sale may be partly good and partly bad, according as circumstances may raise presumptions for or against the separate titles conveyed by it,</i>	377
Sheo Narain Ghose v. Ranee Jymunnee and others.	
<i>A plea put forth (limitation in this instance) must be proved by the party advancing it, and not by his opponent. A judgment of nonsuit founded on a principle vice versa reversed, ..</i>	378

Syud Moozuffur Ali <i>alias</i> Teetoo Meeah v. Chumpabutte Dibbea. <i>Order for payment of costs against defendant on a plaint in- correctly valued modified, with costs of special appeal against plaintiff</i> ,.....	379
Kishen Chundur Neogee v. Doorga Churn Soor and others. <i>Auction sale: suit by defaulting putneedar, claiming the tenure under a benamee purchase, dismissed as opposed to Section 9, Regulation 8, 1819</i> ,	380
Ruttun Munnee Dassee and others v. Collector of Mymensingh and others. <i>Fines under Clause 2, Section 17, Regulation 19, 1814, cannot be inflicted on dependent talookdars</i> ,	381
Collector of Dinagapore v. Muha Mye Dibbea. <i>The courts will allow fair and reasonable charges for collecting rents of estates under charge of court of wards</i> ,	383
Chundur Narain Chuckerbutty and another v. Must Zumeer-o-nissa. <i>The courts of justice cannot interfere with the proceedings of the resumption courts</i> ,	384
Fukeer Chaund Das and others v. Brijmohun Das and others. <i>A claim, under orders of a competent court, having been kept in abeyance pending result of another suit, held, under the circumstance, that limitation must be calculated from date of final disposal thereof, and not from date of original cause of action</i> ,	386

APPLICATIONS FOR SPECIAL APPEAL.

Muharajah Hetnarain v. Deonath Jha and others. <i>Lakhiraj: disputed title not cognizable by moonsiffs, Circular Order 8th October 1844, para. 3</i> ,	301
Ram Hurree Buxshee and another v. Bulram Sircar. <i>Fine on putneedars: remanded to specify law under which it was inflicted, and for record of grounds of reversal of lower court's judgment</i> ,.....	302
Radha Benode Misr v. Sheikh Musheutoollah and others.	
Radha Benode Misr v. Hafeez-o-nissa Begum and others.	
Radha Benode Misr v. Sheikh Deanollah and others.	
Radha Benode Misr v. Lukmeer Khan and others.	
Radha Benode Misr v. Ishur Chundur Chowdhree and others.	
Radha Benode Misr v. Sheikh Muteeoollah and others.	
Radha Benode Misr v. Sheikh Dewanoollah and others.	
Radha Benode Misr v. Lukmeer Khan and others. <i>Hindoo law (inheritance) a claim being divided contrary to para. 1, Circular Order 11th January 1839, the judgments given reversed in consequence</i> , ..	307-312
Sheikh Imdad Ali and others v. Rainsuroop Panday. <i>Documentary proofs should not merely be exhibited but actually filed with the record, and objections of parties affected by them taken</i> ,	314

Hurris Chunder Dhur v. Nubkishen Laheery and others. <i>Remanded for proof of amount of assessment as alleged by plaintiffs,</i>	317
Ramdoolal Chuckerbutty and another v. Ram Mookerjee. <i>Witnesses to a deed being forthcoming, it was held irregular to have recourse to evidence given by them in a suit affecting other parties,</i>	318
Preerag Dutt Panday v. Kishen Mungul Sein and others. <i>Decrees annulled as the court of first instance (sudder ameen) was not competent to entertain the action, which was ostensibly for recovery of the rents of a farm, but in reality exaction of usurious interest on a bond for a sum not cognizable by such officer,</i>	320
Pursun Komar Thakoor v. Shamkishore Race. <i>Auction Sale. Suit by sharer of a neighbouring mehal under Clause 4, Section 28, Regulation 11, 1822, such sharer being also himself a sharer of the property sold,</i>	323
Lallah Rambuksh Singh and others v. Madhoram. <i>Remanded to nonsuit plaintiff's claiming on a petition of plaint the whole of a property of which they admit themselves to be entitled only to 3/4ths,</i>	324
Lallah Rambuksh Singh and others v. Myarain Tewaree. <i>Boundary dispute, remanded for local enquiry,</i>	324
Buktawur Panday v. Deyal Singh. <i>Decisions annulled as award of costs was not in proportion to the sum decreed, and no reason given for the same,</i>	326
Domnu Saha v. Mrs. Thomick. <i>A statement of a nuisance (private) by stopping up a drain and pathway, remanded for further enquiry,</i>	333
Purkhit Sircar and others v. Purnanand Race and others. <i>Zemindar in whose estate lands, the lakhiraj title of which is disputed, are situate, should be made a party to the suit,</i>	336
Joykishen Mookerjee and another v. Gudadhur Purshad Tewary and others. <i>Wasilat refused on the ground that plaintiff had not furnished data for fixing the amount, remanded for enquiry by an ameen,</i>	337
Ilahee Bibi v. Nittanand Koond and others. <i>Disputes for certain khals or creeks and the right of fishery therein, remanded for local enquiry,</i>	338
Hurchunder Nath and others v. Nubboo Coomar Chowdhree and others. <i>Assessment. Notice prescribed in Section 5, Regulation 4, 1793, not applicable to talookdarry tenures; and decisions awarding enhanced rates, without notice per Section 9, Regulation 5, 1812, reversed,</i>	341
Radha Madhub Banoorjea v. Gopal Lal Thakur. <i>Assessment, remanded for evidence as to due service of notice, Sections 9 and 10, Regulation 5, 1812. Law of limitation, not applicable to such cases,</i>	346-347

David Mullik Fradoon Beglar v. Khajah Kapriel Avietick Ter Estafanoos. <i>Remanded to specify the grounds on which the law of limitation is considered applicable,</i>	349
Ameer Hosein and another v. Abdool Ohab and others. <i>Principle of calculation of period of limitation in the case of a claim once nonsuited,</i>	368
Gournath Mujmoadar v. Heirs of Gour Mohun Podar. <i>Witnesses cited in time in support of a claim should be examined,</i>	370
Moulvee Nehalooddeen Ahmed v. Sheikh Amroollah and others. <i>Claim to land and removal of a wall erected thereon, remanded for local enquiry,</i>	373
Sheikh Kijree v. Russool Buxsh. <i>Debt on bond: remanded for further enquiry and reasons for exempting two out of four defendants from liability who had signed the instrument on which the claim is founded,</i>	375
Ramsoondur Pal and others v. Chundrabullee Dibbea and others. <i>Mocurrureedars in possession prior to decennial settlement cannot be summarily ousted: remanded for proof on this head,</i>	376

ERRATA IN THE JUNE DECISIONS.

- Page 237, Geneological table for Mehr-o-nissa *god*, daughter of Gool
Chummun, read *grand*-daughter, &c.
„ 252, Line 12, from the bottom for 1247 F., read 1229 F.
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THE 1ST JULY 1847.

PRESENT:

J. HAWKINS, Esq.,

TEMPORARY JUDGE.

PETITION No. 152 OF 1846.

IN the matter of the petition of Maharajah Hetnarain, filed in this Court on the 30th March 1846, praying for the admission of a special appeal from the decision of Mr. Wm. St. Quintin, additional judge of Behar, under date the 29th December 1845, affirming that of Kasim Ali, moonsiff of Gyah, under date the 28th August 1845, in the case of Deonath Jha and others, plaintiffs, *versus* the petitioner and others, defendants.

It is hereby certified that the said application is granted on the following grounds:

The plaintiffs sued for possession of 12 *biggahs* of land, comprised within the limits of the defendant's zemindaree, which they claimed as *lakhiraj* under specified grants. The defendants denied that the plaintiffs held any *lakhiraj* land in the village mentioned in the plaint; and alleged that the land, forming the subject of action, was part of their zemindaree. They, on this account, demurred to any investigation by the moonsiff for want of jurisdiction. The moonsiff however rejected this plea, under the Circular Order No. 67, of the 8th October 1844; and, proceeding with the enquiry, gave judgment for the plaintiffs, and his decision was confirmed by the additional judge.

I admit the special appeal, for the moonsiff clearly had no jurisdiction. The letter which he cites is no authority in his favor. It authorizes moonsiffs to entertain actions and claims to the *proprietary* right in, and possession of, lands held exempt from the payment of revenue. But had the moonsiff and the additional judge referred to the 3d paragraph of the letter, and the Circular Order No. 95, of the 30th August 1833, therein referred to, they would have seen that such authority extends only to the hearing by moonsiffs of suits having reference to lands, held exempt from the payment of rent, the validity of the tenure of which is not disputed. In this case, the validity of the tenure was the very point at issue; and it is surprising that the moonsiff was not checked in his course of proceeding, on finding that, in order to decide the case, he was obliged to enter upon a full enquiry into this point, which he has done. The moonsiff should either have referred the plaintiffs to another court having competent jurisdiction, or have nonsuited the plaintiffs; or have referred to the judge for instructions to forward the case to him, in order, that it might be referred to the proper tribunal. I annul the decrees of the lower courts, and remand the case that it may be dealt with as above indicated.

THE 1ST JULY 1847.

PRESENT:

J. HAWKINS, Esq.,

TEMPORARY JUDGE.

PETITION No. 165 OF 1846.

IN the matter of the petition of Ram Hurree Buxshee and another, filed in this Court on the 13th April 1846, praying for the admission of a special appeal from the decision of Rasee Radha Govind, principal sudder ameen of Hooghly, under date the 29th December 1845, reversing that of Syud Israr Ali, moonsiff of Keerpoy, under date the 4th September 1845, in the case of Bulram Sirkar, plaintiff, *versus* the petitioners, defendants.

It is hereby certified that the said application is granted on the following grounds:

The defendants are *putneedars* of an estate, of which various persons are proprietors in fractional portions. Within the *putnee* is the village of Gopalpore, in which the plaintiff is a *ryot*. He alleges that he holds a certain quantity of land, (*viz.* 22 *biggahs*) at a rent of rupees 28, 3 *annas*, 8 *pies*; and produces in proof thereof a *pottah*, dated 15th *Chey*t 1247 B. S., granted to him by the attorneys of the proprietor of a 13 *anna*, 17 *gundah* share. The defendants, on the other hand, assert, that the plaintiff holds 25 *biggahs* at a rent of rupees 34, 9 *annas*. The plaintiff alleging that he was compelled to pay a surplus rent for 1250, sues to recover the excess. The *pottah* produced by the plaintiff was denied by the zemindars.

The moonsiff, after a very full investigation, pronounced the *pottah* to be a forgery; and dismissed the claim. The principal sudder ameen in rather a summary way, and without alluding to many of the reasons stated by the moonsiff for rejecting the principal evidence adduced by the plaintiff, reverses the decision. He does not refer to the competency or otherwise of the attorneys to grant the *pottah*, or enquire under what authority they acted, and he adjudges the defendants to pay a penalty of double the surplus collections under the regulations (what regulation is not cited) for which the plaintiff does not sue. The decree of the principal sudder ameen is incomplete, and very unsatisfactory.

I admit the appeal, and remand the case to the present principal sudder ameen, who will place it on his file, and proceed again with the investigation. Should he be of the same opinion as the former principal sudder ameen, that the defendants should be adjudged to pay a penalty, he will of course specify the regulation under which he acts.

THE 1ST JULY 1847.

PRESENT:

R. H. RATTRAY, Esq., and

SIR R. BARLOW, BART.,

JUDGES.

W. JACKSON, Esq.,

TEMPORARY JUDGE.

CASE No. 132 OF 1846.

Special Appeal from a decree passed by the Officiating Judge of Bhagulpore, Mr. H. Metcalfe, July 12th, 1844; modifying one passed by the Principal Sudder Ameen of Monghyr, Mohummud Rafik Khan, May 24th, 1843.

SHEIKH MEHUR ALI, APPELLANT, (DEFENDANT,)

versus

IZZUT ALI, DECEASED, MUSST. RAJUN AND OTHERS, HIS
HEIRS, RESPONDENTS, (PLAINTIFFS.)

THIS suit was instituted by the deceased Izzut Ali, on the 3rd December 1840, to recover from appellant possession of certain portions of two villages purchased by him (Izzut Ali) ; with *wasildt* (mesne profits) from the period of dispossession (May 1839) to the date of recovery.

The special appeal was admitted by Sir R. Barlow, on the 6th May 1846, who recorded the following certificate :

‘The plaintiff’s action, of the 3rd December 1840, is for possession of certain portions of two villages purchased by him, and for *wasildt* before plaint, the amount of which is not specified.

‘The lower courts have awarded *wasildt*. The amount should have been stated, and the requisite fees been paid for the same. A special appeal is admitted to try whether the provisions of the Circular Order of 11th January 1839 are not a bar to the recovery of any *wasildt* under the circumstances of the case.’

Messrs. BARLOW and JACKSON.—We are of opinion that the omission to mention the amount of *wasildt* claimed before institution of suit, is a bar to the recovery of such *wasildt*, with reference to the spirit of the Circular Order 11th January 1839; and the lower court’s orders, awarding *wasildt* for that period, are erroneous, and must be reversed to that extent. Ordered accordingly.

Mr. RATTRAY.—The Circular Order of the 11th January 1839, paragraph 6, declares, that ‘a party having sued for the principal of a debt, without including interest, must be presumed to have relinquished his claim to the interest accruing prior to the action, and cannot institute a second suit to recover such interest after obtaining a decree for the principal. The same principle applies to *wasildt* for any period antecedent to the institution of a suit for the proprietary right in the land, &c.’ Now, in the case before us, the plaintiff did sue for ‘*wasildt*’ when he sued for the land; and that from a specific date, up to that of re-possession: but the sum claimed, as actually due between those dates, was not named. It could not very well be so. No objection was raised by the defendants, nor by the court before which the suit was pending; which last eventually passed a decree in the plaintiff’s favor, leaving the account of the *wasildt*, due for the period stated, to be adjusted on execution of the judgment. This was irregular, I admit: but I do not admit that the law,—this *circular*, that is,—contains any thing, in letter or spirit, to prohibit a return of the proceedings, to enable the plaintiff to supply the omission now impugned, and for a re-trial of the case upon its merits. The court was more in fault than the plaintiff; and I cannot perceive the legal obligation by which we are compelled to deprive the latter, of what, in equity, there cannot be a doubt of his fair and honest title to.

THE 2D JULY 1847.

PRESENT:

A. DICK, Esq.,

JUDGE.

CASE No. 120 OF 1845.

*Regular Appeal from a decision of Lieutt. C. Scott, Principal
Assistant Commissioner Kamroop, Assam.*

JUGESHUR DHEEKA CHOWDREE, AND OTHERS,
APPELLANTS, (PLAINTIFFS,)

versus

KALEECHURN NAIEERUTTUN, RESPONDENT,
(DEFENDANT.)

Wukeel of Appellants—Sreenath Raee.

Wukeel of Respondent—Abbas Ali.

APPEAL laid at Company’s rupees 16,584, 9 annas, 9 pies, for surplus mesne profits, collected by mortgagee during possession of mortgaged property.

The particulars of the case are thus stated by the principal assistant commissioner, and his decision on it.

'The plaintiffs set forth, that the defendant was security, in 1235 B. S., for the deceased Dhurmehur Chowdhree, for his *chowdhreeship* of *pergunnah* Puchimpar; on which consideration the deceased mortgaged to the defendant all the *khat* lands belonging to the family, with the exception of those belonging to Komlessur Chowdhree. That the defendant, besides this mortgage bond, exacted, in the month of *Maug* of the same year, another document for an amount of *Narainy* rupees 9,547-8-7½, as due to him, also on account of the above security; and that, on this second bond, he instituted a suit against them, (the plaintiffs) in the court of the commissioner, and obtained a decree for Company's rupees 6,823-11-3, against the plaintiffs, and Mohessur Chowdhree, Dheressur, and Rodressur. That the present suit is brought for the proceeds of the mortgaged *khat* lands for the period of five years, viz. from 1235 to 1239 B. S., valued, with interest, at the amount of claim. This they hope to obtain, as the defendant cannot be considered entitled to both the decree above alluded to, and the proceeds of these *khat* lands on account of one transaction.

'The defendant pleaded, that the plaintiffs being unable to pay the rent of these *khat* lands, they were made over to him by the collector; and that he had actually lost the rent of his own lands, in satisfaction of the demands for these *khat* lands. That there is at present a case before the commissioner of revenue, in which the collector has recorded his opinion on the justness of his demand, against the Chowdhree on account of this security bond. With regard to the bond for *Narainy* rupees 9,547-8-7½, it was given to him on the 30th of *Maug* 1750 Assam Style, for sums due to him on account of payments made for the Chowdhree's revenue; and for this a decree was passed by the commissioner.

'The plaintiff's claim is considered invalid, under the following circumstances. From a *fysullah* of the commissioner, dated 30th November 1838, it appears that, when the defendant instituted his claim, on the bond for *Narainy* rupees 9,547-8-7½, in the commissioner's court, the plaintiffs then lodged an account of the proceeds of these lands, and requested remission for the amount from the claim; but this was disallowed by the commissioner. Had any thing been elicited to uphold their claim to remission, it would then have been decreed, or an order passed by the commissioner to lodge a separate claim for the amount. To admit it now, would be to reverse the order or decision of the commissioner's court, which it is incompetent for this court to do.

'It also appears from a *purwannah* of the late Mr. Commissioner Scott, dated the 10th of March 1829, to Dhurmehur Chowdhree,

that if the Gosain should hold these lands on account of the security, the Chowdhree should not be liable for interest on any sums advanced by the Gosain, on account of this security; but that, if he did not hold the lands, he could charge interest at 4 per cent. : to this the Chowdhree agreed. The Gosain claimed no interest on this account before the commissioner. By holding the lands, he of course forfeited his right to interest; and, instead, enjoyed the proceeds of the land; and it will further be observed, on a reference to the proceedings of the commissioner's court, that the plaintiffs, in replying to the defendant's claim, distinctly urged that, as defendant had enjoyed the usufruct of the lands, they could not, under the orders passed by the late Mr. Commissioner Scott, be saddled with interest. Now for plaintiffs to come forward and claim the same usufruct, is inadmissible in my opinion. Had the defendant claimed interest on his claim before the commissioner, and got a decree for it, of course the plaintiffs would have been fully entitled to the proceeds of the mortgaged lands; but defendant asked for no interest, he got none decreed, and consequently he has enjoyed the produce of the lands. Some of the plaintiffs plead that they were minors at the time the suit was tried by the commissioner; but as they did not then advance this plea, it cannot now be admitted. Plaintiffs produce a settlement deed of the collector's, to prove that the defendant held these lands for five years: this document, however, shows that he held them three years only; and that, for the other two years, the revenues were collected by the Government. This document is therefore contradictory of their statement. These circumstances, alone, were sufficient, without further evidence, to disprove the claim. Witnesses however have been examined, and they have proved nothing in support of it. I dismiss this suit. Plaintiffs to pay all costs.'

The appellants, dissatisfied, preferred this appeal: the pleas principally calling in question the applicability of the commissioner's decision, in favor of respondent, on the bond, as understood by the principal assistant commissioner.

On perusal of the mortgage bond, and the commissioner's decision, it appears manifest, that the mortgage bond, on which this suit is founded, was minutely noticed and recited in that decision, and witnesses examined; who proved that an adjustment of accounts took place between the mortgagers and mortgagee, and that the bond, on which the claim in that suit was based, was given by the mortgagers to the mortgagee for the balance due; and that the mortgagers had filed accounts to shew a balance in their favour, similar to those on which this suit is preferred, but had failed to produce any evidence in proof.

This suit was consequently altogether inadmissible; and the appeal is therefore dismissed with full costs.

THE 3D JULY 1847.

PRESENT :

C. TUCKER, Esq., and

SIR R. BARLOW, BART.,

JUDGES.

J. HAWKINS, Esq.,

TEMPORARY JUDGE.

PETITION No. 299 of 1847.

IN the matter of the petition of Radha Benode Misr, filed in this Court on the 27th of May 1847, praying for the admission of a special appeal from the decision of Mr. James Grant, judge of Dinagapore, under date the 24th February 1847, reversing that of Mohummud Khoorshed, principal sudder ameen of Dinagapore, under date the 15th July 1846, in the case of the petitioner, plaintiff, *versus* Sheikh Musheetoollah and others, defendants.

The particulars of this case are to be found at page 11 of the decisions for the zillah of Dinagapore, during the month of February last.

It appears that the plaintiff brought this action for possession of half of *talook* Morargutee, &c, stating that he was the heir of the former proprietors, Nundolal Raee and Ramdolal Raee, on the death of Tara Munni, the widow of the latter. That Tara Munni, however, who only possessed a life-interest, had, contrary to the Hindu law, disposed of the property to which the plaintiff must have succeeded on her death; and that, consequently, under the same law, he was entitled to immediate possession. Tara Munni being entitled to maintenance only for her breach of trust; and that he now sued for possession, or a cancelling of the alienation effected by her.

There are 8 suits of the same nature, for cancelling various alienations by the same party, now brought before the Court, on applications for the admission of special appeals.

It appears, moreover, that some time prior to the institution of the present suits, the plaintiff brought an action for one portion of the property forming the subject of a single alienation, and that he then stated his intention to sue for the rest. Having obtained a decree in the first case, he instituted two more suits, and was then told by the principal sudder ameen (a proceeding highly irregular, and which cannot affect the results of the suits,) to bring his actions for all the various portions of the property sold by Tara Munni, to the various parties who are now the defendants in the several suits.

The principal sudder ameen gave judgment for the plaintiff on all the suits; but his decision was reversed by the zillah judge on the merits of the case.

The Court observe, that the plaintiff sued *as heir* to the property, in consequence of the widow Tara Munni's malversation and illegal alienation of the property; and, consequently, he should have included the whole in one suit under Circular Order of the 11th January 1839, instead of dividing his claim into several separate actions; and as he had previously obtained a decree for one portion, all the subsequent suits should have been dismissed. The lower courts, instead of pursuing the proper course, have entered into an investigation of the merits in each case, which they should not have done. The Court therefore admit the special appeal; and, annulling the decrees of both the lower courts, remand the case under Clause 2, Section 2, Regulation 9, 1831, that it may be dealt with according to the Circular above cited. The zillah judge will pass the necessary order for a refund of the stamp required for the appeal to his court.

THE 3D JULY 1847.

PRESENT :

C. TUCKER, Esq., and

SIR R. BARLOW, BART.,

JUDGES.

J. HAWKINS, Esq.,

TEMPORARY JUDGE.

PETITION NO. 300 OF 1847.

IN the matter of the petition of Radha Benode Misr, filed in this Court on the 27th May 1847, praying for the admission of a special appeal from the decision of Mr. James Grant, judge of Dinagapore, under date the 24th February 1847, reversing that of Mohummud Khoorshed, principal sudder ameen of Dinagapore, under date the 15th July 1846, in the case of the petitioner, plaintiff, *versus* Hafeez-o-nissa Begum and others, defendants.

The special appeal is admitted on the same grounds as the case Radha Benode Misr *versus* Musheetoollah No. 299, and the same order passed. A copy of the order in that case, to be recorded with this case.

THE 3D JULY 1847.

PRESENT:

C. TUCKER, Esq., and

SIR R. BARLOW, BART.,

JUDGES.

J. HAWKINS, Esq.,

TEMPORARY JUDGE.

PETITION No. 301 OF 1847.

IN the matter of the petition of Radha Benode Misr, filed in this Court on the 27th May 1847, praying for the admission of a special appeal from the decision of Mr. James Grant, judge of Dinagepore, under date the 24th February 1847, reversing that of Mohummud Khoorshed, principal sudder ameen of Dinagepore, under date the 15th July 1846, in the case of the petitioner, plaintiff, *versus* Sheikh Deanoollah and others, defendants.

The special appeal is admitted on the same grounds as the case Radha Benode Misr *versus* Mushecutoollah No. 299, and the same order passed. A copy of the order in that case to be recorded with this case.

THE 3D JULY 1847.

PRESENT:

C. TUCKER, Esq., and

SIR R. BARLOW, BART.,

JUDGES.

J. HAWKINS, Esq.,

TEMPORARY JUDGE.

PETITION No. 302 OF 1847.

IN the matter of the petition of Radha Benode Misr, filed in this Court on the 27th May 1847, praying for the admission of a special appeal from the decision of Mr. James Grant, judge of Dinagepore, under date the 24th February 1847, reversing that of Mohummud Khoorshed, principal sudder ameen of that district, under date the 15th July 1846, in the case of the petitioner, plaintiff, *versus* Lukmeer Khan and others, defendants.

The special appeal is admitted on the same grounds as the case Radha Benode Misr *versus* Mushecutoollah No. 299, and the same order passed. A copy of the order in that case to be recorded with this case.

THE 3D JULY 1847.

PRESENT :

C. TUCKER, Esq., and

SIR R. BARLOW, BART.,

JUDGES.

J. HAWKINS, Esq.,

TEMPORARY JUDGE.

PETITION NO. 303 OF 1847.

IN the matter of the petition of Radha Benode Misr, filed in this Court on the 27th May 1847, praying for the admission of a special appeal from the decision of Mr. James Grant, judge of Dinagepore, under date the 24th February 1847, reversing that of Mohummud Khoorshed, principal sudder ameen of that district, under date the 15th July 1846, in the case of the petitioner, plaintiff, *versus* Ishur Chunder Chowdhree and others, defendants.

The special appeal is admitted on the same grounds as the case Radha Benode Misr *versus* Musheentoollah No. 299, and the same order passed. A copy of the order in that case to be recorded with this case.

THE 3D JULY 1847.

PRESENT :

C. TUCKER, Esq., and

SIR R. BARLOW, BART.,

JUDGES.

J. HAWKINS, Esq.,

TEMPORARY JUDGE.

PETITION NO. 304 OF 1847.

IN the matter of the petition of Radha Benode Misr, filed in this Court on the 27th May 1847, praying for the admission of a special appeal from the decision of Mr. James Grant, judge of Dinagepore, under date the 24th February 1847, reversing that of Mohummud Khoorshed, principal sudder ameen of that district, under date the 15th July 1846, in the case of the petitioner, plaintiff, *versus* Sheikh Muteeoollah and others, defendants.

The special appeal is admitted on the same grounds as the case Radha Benode Misr *versus* Mushcutoollah No. 299, and the same

order passed. A copy of the order in that case to be recorded with this case.

THE 3D JULY 1847.

PRESENT :

C. TUCKER, Esq., and

SIR R. BARLOW, BART.,

JUDGES.

J. HAWKINS, Esq.,

TEMPORARY JUDGE.

PETITION No. 305 OF 1847.

IN the matter of the petition of Radha Benode Misr, filed in this Court on the 27th May 1847, praying for the admission of a special appeal from the decision of Mr. James Grant, judge of Dinagepore, under date the 24th February 1847, reversing that of Mohummud Khoorshed, principal sudder ameen of that district, under date the 15th July 1846, in the case of the petitioner, plaintiff, *versus* Sheikh Dewanoollah and others, defendants.

The special appeal is admitted on the same grounds as the case Radha Benode Misr *versus* Musheentoollah No. 299, and the same order passed. A copy of the order in that case to be recorded with this case.

THE 3D JULY 1847.

PRESENT :

C. TUCKER, Esq., and

SIR R. BARLOW, BART.,

JUDGES.

J. HAWKINS, Esq.,

TEMPORARY JUDGE.

PETITION No. 306 of 1847.

IN the matter of the petition of Radha Benode Misr, filed in this Court on the 27th May 1847, praying for the admission of a special appeal from the decision of Mr. James Grant, judge of Dinagepore, under date the 24th February 1847, reversing that of Mohummud Khoorshed, principal sudder ameen of that district,

under date the 15th July 1846, in the case of the petitioner, plaintiff, *versus* Lukmeer Khan and others, defendants.

The special appeal is admitted on the same grounds as in the case Radha Benode Misr *versus* Mushecutoolah No. 299, and the same order passed. A copy of the order in that case to be recorded with this case.

THE 3D JULY 1847.

PRESENT :

C. TUCKER, Esq., and
SIR R. BARLOW, BART.,

JUDGES.

J. HAWKINS, Esq.,

TEMPORARY JUDGE.

CASE No. 272 OF 1846.

*Special Appeal from a decision of Mr. F. Cardew, Judge of .
Beerbhoom, dated 23rd November 1845.*

BRIJNATH PAUL AND OTHERS, APPELLANTS, (PLAINTIFFS,)

versus

BUDDUN CHUNDER MUNDUL AND OTHERS, RESPON-
DENTS, (DEFENDANTS.)

Wukeel of Appellants—Gholam Sufdur.

Wukeel of Respondents—J. G. Waller.

The special appeal was admitted by Mr. C. Tucker, on the 21st April 1846, who recorded the following certificate :

‘ In this case the plaintiffs sued to recover a sum of money, on a bond dated 6th *Aughun* 1233 : the suit was instituted on the 28th *Kartick* 1250, and to show that the statute of limitation was no bar to the suit, pleaded, that rupees 502-4 had been paid, in part of the same, at different times up to the year 1247. The judge would not allow this to bar the objection raised as to the time : but it has already been ruled in such cases, that payment in part during the 12 years, saves the time ; therefore I admit the special appeal on these grounds.’

We find, on reference to the judge’s decree, that he did not consider that the alleged intermediate payments were proved to have been made, on account of the bond on which this suit was brought.

Under these circumstances, the judge’s opinion on the evidence being conclusive, we dismiss the appeal ; and affirm the decision of the lower court, with costs payable by the appellants.

THE 3D JULY 1817.

PRESENT :

C. TUCKER, Esq., and
SIR R. BARLOW, BART.,

JUDGES.

J. HAWKINS, Esq.,

TEMPORARY JUDGE.

CASE No. 171 OF 1845.

*Special Appeal from a decision of the Acting Judge of East
Burdwan, dated the 13th December 1844.*

ANUND MOY DUTT, APPELLANT, (PLAINTIFF,)

versus

RAMJOY MUNDUL AND OTHERS, RESPONDENTS,
(DEFENDANTS.)

Wukeel of Appellant—Pursun Koomar Thakur.

Wukeel of Respondents—Gholam Sufdur.

THE special appeal was admitted by Mr. C. Tucker, on the 24th June 1845, who recorded the following certificate:

‘The plaintiff instituted this suit to recover possession of a *putnee talook*, which belonged to him originally; and having been exposed for sale, for the realization of arrears of rent due to the zemindar, he stated he had again purchased it at the sale, in the name of Joodishtee Chatterjee, his servant. The defendant, Ramjoy Mundul, pleaded he had purchased the *putnee* from Joodishtee Chatterjee, who, he asserted, was the real as well as the nominal purchaser. The principal sudder ameen, considering it to be proved that Anund Moy Dutt was the real purchaser, decreed for the plaintiff. Ramjoy Mundul appealed. The acting judge, Mr. Deedes, considering that the laws applicable to sales for the recovery of arrears of Government revenue, were equally applicable to sales of *putnee talooks*, under Regulation 8, 1819; and guided by the precedents at page 118 of vol. II., page 24, vol. III., and page 188, vol. IV. of the Sudder Dewanny Reports, refused to enter into the merits of the question in dispute, as to which of the two was the real purchaser, and dismissed the plaintiff’s claim; stating such a purchase to be illegal, and consequently no suit could be brought under it. Without entering here into the enquiry, whether the laws for the sale of lands for the recovery of arrears of Government revenue are, or are not, applicable to the sales made under Regulation 8, 1819, it may be sufficient to say, that under Clause 2, Section 20, Regulation 11, 1822, (the sale having taken place in 1837) the judge could not cancel

the sale, and deprive the real purchaser of his purchase. It was, therefore, in every point of view, incumbent on the judge to ascertain and record the point in issue between the parties, viz. who was the real purchaser at the public sale ; and I admit the special appeal to try this point.'

We are of opinion, that, as the plaintiff states himself to have been the defaulter, it was not competent to him to purchase the *pulnee* tenure, such purchase being prohibited by Section 9, Regulation 8, 1819 ; and that, consequently, he cannot recover under cover of a title which the law expressly disallows. An opinion is expressed in the case of Shiam Chund Bose and others *v.* Dyal Chund Bose and others (page 412 of the decisions of the Sudder Dewanny Adawlut for the year 1845) that though the law prohibits the defaulter to bid, it does not prohibit another to bid for him. This, however, is a mere *dictum*, which did not govern the decision of the Court in that case ; and we do not consider the *dictum* to be binding upon the Court in the disposal of this suit. We accordingly dismiss the appeal, and confirm the decision of the judge. The costs to be paid by the appellant. . .

THE 5TH JULY 1847.

PRESENT:

C. TUCKER, Esq.,

JUDGE.

PETITION No. 96 OF 1846.

IN the matter of the petition of Sheikh Imdad Ali and others, filed in this Court on the 10th March 1846, praying for the admission of a special appeal from the decision of the judge of Patna, under date the 6th December 1845, affirming that of the moonsiff of Hilsa, under date the 17th May 1845, in the case of Ramsuroop Panday, plaintiff, *versus* Sheikh Imdad Ali and others, defendants.

In this case the petitioners were sued by the plaintiff, Ramsuroop Panday, for the possession of a moiety of a watercourse with the land and trees attached to it. The moonsiff decreed for the plaintiff on the copy of a *kubaleh*, of which he records, that the plaintiff's *wukeel* had shown him the original, and taken it away again immediately. He further records, that he has no doubts whatever of the authenticity of the original, because it is a very ancient one, and bears the seal of the *pergunnah casee*. Notwithstanding the extreme irregularity of this proceeding was pleaded in appeal, the judge, without noticing it, affirmed the decision of the moonsiff. I admit the special appeal, annul the decrees of both the lower courts, and remand the proceedings to the moonsiff's court. The moonsiff will require the plaintiff to

file the original bill of sale, and afford the defendants the opportunity of examining it, and offering any objections to it they may think necessary; and, after having tested its genuineness, proceed to dispose of the case *de novo*.

THE 5TH JULY 1847.

PRESENT:

R. H. RATTRAY and

A. DICK, ESQRS.,

JUDGES.

W. JACKSON, Esq.,

TEMPORARY JUDGE.

CASE No. 95 OF 1846.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Bhagulpore, Mohummud Mujid Khan, December 29th 1845.

BIBI TAJUN, APPELLANT, (PLAINTIFF,)

versus

SUMSAMOODEEN, BOLAKEE LAL, GOLAB CHUND AND
NEEM CHUND, RESPONDENTS, (DEFENDANTS.)

Wukeels of Appellant—Ameer Ali and J. G. Waller.

Wukeel of Respondent—Gholam Sufdur.

THIS suit was instituted by appellant on the 31st August 1844, to obtain the foreclosure of a mortgage, with possession of a 7 *annas*' share of *mouzahs* Gurindeh-Hilsec and others, in *pergunnah* Unruthoo; and to cancel a *mokurruree pottah* (or lease in perpetuity) and an order passed by the magistrate in favor of respondents, with mesne profits (*wasilat*) from *Cheynt to Sawun 1251 Fuslee*. Estimate (for stamp) Company's rupees 14,721-1-16.

This is a claim under a deed of conditional sale, the execution of which is not denied: but appellant not only claims possession of the lands sold, but also to cancel a *mokurruree* lease for the same, held, from the same person, Sumsamooddeen, by Bolakee Lal and Golab Chund, respondents. The deed of sale bears date the 11th November 1841; the *mokurruree* lease, the 7th March 1843: but there is strong reason to doubt the correctness of the recorded date of execution of the former; inasmuch as, it appears, that, on that day, Sumsamooddeen was not at Monghyr, where it is stated to have been executed and accepted, but at Patna, where he is proved to have filed a petition before the collector, and also to have taken part in certain proceedings before arbitrators, of whom

he was one himself; his attendance in both instances being on the day in question. Further, it is to be observed, that, when the respondents, Bolakee Lal and Golab Chund, claimed possession in virtue of their lease, which was awarded by the magistrate under Act 4 of 1840, no objection was offered by appellant nor any mention of, or allusion to, any sale to her, made, by her or others: the inference is, that, at that time, no such sale had taken place. On the whole we believe that the date of the deed of sale is falsely stated, and that the *mokurruree* deed was executed and obtained before it: it cannot, consequently, be affected by it. As however, Sumsamooddeen acknowledges the execution of the sale-deed, the claim of appellant must be upheld against him; and the principal sudder ameen was correct in so upholding it, with reservation that the rights of the *mookurrureedars* should not in any way be prejudiced by the judgment.

We affirm the decision of the principal sudder ameen; with costs payable by appellant.

THE 5TH JULY 1847.

PRESENT:

R. H. RATTRAY and

A. DICK, Esqrs.,

JUDGES.

W. JACKSON, Esq.,

TEMPORARY JUDGE.

CASE No. 96 OF 1846.

Appeal from a decree passed by the Principal Sudder Ameen of Bhagulpore, Mohummad Mujid Khan, December 29th 1815.

MUSST. TAJUN BIBI, APPELLANT, (DEFENDANT,) •

versus

BOLAKEE LAL AND GOLAB CHUND, RESPONDENTS, •
(PLAINTIFFS.)

Wukeels of Appellant—Ameer Ali and J. G. Waller.

Wukeel of Respondents—Gholam Sufdur.

THIS suit was instituted by respondent on the 23d August 1814, to cancel the *kubaleh-bybilwafa* (or deed of mortgage with conditional sale) upon which appellant founded the claim set forth in No. 95, decided by the Court at its present sitting. A reference to that case will shew, that the proprietary right of appellant, in virtue of the deed held by her, was decreed by the principal sudder ameen and upheld by this Court, with reservation to respondents

of their rights under the *mookurruree* lease previously obtained by them. Nothing further appears to be called for here, beyond a record of the order in regard to costs, which will be made chargeable to appellant.

THE 6TH JULY 1847.

• PRESENT :

C. TUCKER, Esq.,

JUDGE.

PETITION NO. 875 OF 1845.

IN the matter of the petition of Hurris Chunder Dhur, filed in this Court on the 23d December 1845, praying for the admission of a special appeal from the decision of the judge of zillah Jessore, under date the 23d September 1845, confirming that of the principal sudder ameen of that district, under date the 13th May 1845, in the case of Nubkishun Laheery and others, plaintiffs, *versus* Hurris Chunder Dhur and others, defendants.

In this case the plaintiffs sued the defendant and petitioner, Hurris Chunder, and others, for possession of a *jote jumma*, the annual *jumma* payable to the zemindar being, according to their statement, Co.'s rs. 240-4-3. The petitioner pleaded that one Musst. Ruttun Munnee was the proprietor of the *jote*—the *jumma* of which, according to his and her statement, was Co.'s rs. 452-10-5—and that she had given him a farming lease of the property for nine years, at an annual *jumma* of Co.'s rs. 621: of which he paid 452-10-5, to the zemindar, and the remainder to herself. The decision of the principal sudder ameen, affirmed by the judge, decreed the proprietary right in the *jote jumma* to the plaintiffs; and awarded possession with *wasilat*, less the *jumma* stated by the plaintiffs, viz. rupees 240-4-3. Against this the special appeal is lodged, on the ground that no evidence was taken to the amount *jumma*. I find that the decree of the principal sudder ameen records, that the *jumma* pleaded by defendants, viz. rs. 452-10-5, was not proved: at the same time there is no mention of that pleaded by the plaintiffs having been proved. This is of importance both to the petitioner, and also to the zemindar, who was also a defendant in the suit. Consequently I admit the special appeal; and, annulling the decisions of both the lower courts, remand the proceedings to the principal sudder ameen, who will take evidence as to the *jumma* on behalf of the plaintiffs, and then dispose of the question of *wasilat*.

THE 6TH JULY 1847.

PRESENT :

C. TUCKER, Esq.,

JUDGE.

PETITION No. 851 OF 1845.

IN the matter of the petition of Ramdoolal Chuckerbutty and Prankishen Munna, filed in this Court on the 15th December 1845, praying for the admission of a special appeal from the decision of the additional principal sudder ameen of zillah 24-Pergunnahs, under date the 15th September 1845, reversing that of the moonsiff of Nowabgunge, under date the 29th April 1845, in the case of Ram Mookerjee, plaintiff, *versus* Ramdoolal Chuckerbutty, Prankishen Munna, and others, defendants.

In this case the petitioners, who were defendants in the suit above indicated, applied for a special appeal, on the ground that the witnesses to a *kuballa* filed by the plaintiffs were not examined in this case; but that copies of their depositions, extracted from another case to which he was not a party, were filed in the present suit; so that he had no opportunity of putting any questions to them. I find this was the case with regard to two of the witnesses to the *kuballa*, viz. Seeb Chunder Pal and Paunch Cowree Bagdee.

I therefore admit the special appeal; and, annulling the decisions of both the lower courts, remand the proceedings, in order, that the above named two witnesses may be caused to appear before the moonsiff, who will, on their attendance, take their evidence in the presence of the petitioners, or of their duly constituted *wakeel*.

THE 7TH JULY 1846.

PRESENT :

R. H. RATTRAY, Esq.,

JUDGE.

CASE No. 149 of 1846.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Behar, Hedayet Ali Khan, March 20th 1846.

MUSST. BODII KOWAREE AND RUGHHOONATH
PURSHAD, APPELLANTS, (DEFENDANTS,)

versus

MOD NURAIN SINGH, RESPONDENT, (PLAINTIFF.)

Wukeel of Appellants—Kishun Kishoor Ghose.

Wukeels of Respondent—J. G. Waller and Abbas Ali.

THIS suit was instituted by respondent on the 21st March 1843, to recover from appellants, and others who have not appealed, pos-

session of certain lands comprehended in *mouzah* Bhuteea and other villages, in *pergunnah* Sumunt, with mesne profits (*wasilat*) from 1248 to the autumnal harvest (*khureef*) of 1250 *Fuslee*; and the reversal of an order passed by the magistrate under Act 4 of 1840. Estimate (for stamp) Company's rupees 8,535-7-6.

The substance of the plaint, is, that the lands contested are part of the hereditary estate of respondent; that the produce was settled by his (respondent's) father, Rajah Mitrajeet Singh, on Bed Nurain Singh, on condition of personal attendance on the part of the latter; that Bed Nurain died in 1248 F. when the lands reverted to Het Nurain and his brother (respondent); that on the 30th December 1840, a division of their estate took place between the brothers, when these villages fell to the share of respondent, who, when he proceeded to take possession, was opposed by appellants; that the matter came before the criminal authorities, who upheld appellants' occupancy, leaving respondent to prefer his claim before the civil court: this he now does, by instituting the present action.

Appellants, in answer, state that, in the *Fuslee* year 1140, Rajah Soondur Sahee, an ancestor of respondent, bestowed the villages in question on his daughter, on the occasion of her quitting the paternal roof to go to her husband; that this daughter was the mother of Bundhoo Singh, from whom the property has descended from generation to generation, till it became theirs (appellants'); that no opposition was ever made; but that Mitrajeet Singh always paid the Government revenue with that of lot Sheonuggur, and never made any claim to a right in the land; that upwards of 12 years having elapsed (since the bestowal of Soondur Sahee upon his daughter) the action will not lie, and must be dismissed under the statute of limitation.

In the lower court Het Nurain, the brother of respondent, filed a petition, protesting against any cognizance of the suit, on the ground of no division, involving these villages, having taken place between him and his brother; whose rights extended to a seven annas' share only, while his own were nine annas' 'without his association with his brother, as plaintiff, the case could not proceed.'

The principal sudder ameen observes, that the claim set forth by Het Nurain is not before the court, which must deal with the case which is before it, on its merits, and as if Mitrajeet Singh were himself a party to it. If Het Nurain have any rights, they will be determined in the suit now pending between him and his brother. It is admitted (he continues) by the defendants, that these villages have been long hereditary in the plaintiff's family; and that up to the present time, they (defendants) have been absolved from the payment of the Government revenue, which has

been duly satisfied by the plaintiff and his predecessors. It is proved, that the settlement of 1197 F., of these villages, was made with Rajah Mitrjeet, without any mention of, or allusion to, defendants in connexion with them; nor is any right, or interest in them, on their part, discoverable from the *putwaree's* accounts and papers antecedently: and besides, were any evidence forthcoming before the settlement of 1197 F., it would avail nothing now. The asserted bestowal of the villages upon his daughter by Rajah Soondur Sahee, is not established by any document or other proof of the fact; while the evidence in support of the claim preferred by the plaintiff is clear and conclusive. The *wasilat* is calculated at a lower rate than might have been fairly assumed, with reference to the accounts of former years to be found in the collector's office; and altogether there cannot be a doubt of the plaintiff's right to what he sues for. A decree in his favor is passed accordingly, with costs payable by the defendants.

Without entering upon the principal sudder ameen's disposal of the protest entered by Het Nurain, it is sufficient to observe, that no appeal has been made against it, and that, by the *tukseem-nameh* (or deed of partition) filed in the case, these villages 'are shewn to have been amongst those assigned to respondent, as his share of the paternal estate; and, consequently, that his brother (Het Nurain) had no just right of interference. As regards the judgment in favor of respondent, I entirely concur in the justice of the decision; which I affirm accordingly, with all costs chargeable to appellants.

THE 8TH JULY 1847.

PRESENT:

J. HAWKINS, Esq.,

TEMPORARY JUDGE.

PETITION No. 188 OF 1846.

IN the matter of the petition of Preag Dutt Panday, filed in this Court on the 22d April 1846, praying for the admission of a special appeal from the decision of Mr. C. Mackay, principal sudder ameen of Mymensingh, under date the 22d January 1846, confirming that of the sudder ameen of Mymensingh, under date the 19th August 1845, in the case of the petitioner, plaintiff, *versus* Kishen Mungul Sein and others, defendants.

It is hereby certified that the said application is granted on the following grounds:

The plaintiff sued for arrears due from the defendants, on an under farm held by them from him. It appeared that Kishen Mungul Sein, and others, defendants, had borrowed the sum of 2,000 rupees from the plaintiff; and, as security for the debt, had

given a farm of their *tulooks* to the plaintiff, taking it again from him as under-farmers at a specified rent. The sudder ameen and principal sudder ameen held that the rent, payable on the under-farm, was in fact a stipulation to pay more than the legal interest; and that, therefore, the whole transaction was illegal under Section 9, Regulation 15, 1793.

This, it is clear, involved the question of the legality or otherwise of the bond; and in that case the suit should have been transferred to another court for trial, the jurisdiction of the sudder ameen being limited to the trial of suits to the value of 1,000 rupees.

I admit the special appeal; and, annulling the decrees of both courts, remand the case that it may be tried by a competent authority. The principal sudder ameen will take the proper measures for causing a refund of the amount stamp, on which the first appeal was preferred.

THE 8TH JULY 1847.

PRESENT :

R. H. RATTRAY, Esq., and

SIR R. BARLOW, BART.,

JUDGES.

W. JACKSON, Esq.,

TEMPORARY JUDGE.

CASE No. 115 OF 1846.

Regular Appeal from a decree passed by the 2d Principal Sudder Ameen of Tirhoot, Syud Ushruf Hoscin, February 17th 1846.

BABOO CHIEDEE LAL, APPELLANT, (DEFENDANT,)

versus

WILLIAM ROBERT JONES, RESPONDENT, (PLAINTIFF.)

Wukeels of Appellant—Ameer Ali and Ghotam Sufdur.

Wukeel of Respondent—Pursun Komar Thakur.

THIS suit was instituted by respondent on the 26th February 1845, to recover the sum of Company's rupees 20,250, amount of damage sustained by the non-fulfilment of an engagement entered into by appellant, for himself and Cheonee Lal, a defendant in the case, to grow and supply indigo seed, during the years 1249 to 1251, *Fuslee*.

The nature of the contract between the parties, is set forth in a document (*ikrarnamoh*) bearing the signature of Cheonee Lal, in whose name it is drawn up, with that of Chedee Lal, (the appellant,) as surety for the performance of the engagement. The do-

cument is proved by evidence. It appears, that Cheonee Lal was not present at the time it was executed, but that Chedee Lal had it written in his (Cheonee Lal's) name, which he signed on his behalf, adding his own as the security ; in fact, that Cheonee Lal was a mere servant of Chedee Lal, and that the individual contracting was Chedee Lal himself. Of the liability therefore of Chedee Lal to be called upon to fulfil the engagement, the performance of which he had guaranteed, or in default to pay damages arising from the non-performance, no doubt can be entertained. It is distinctly proved that the contract was not fulfilled ; and it remains only to determine the extent of damages for which he is responsible.

By the terms of the contract, appellant, in consideration of an advance of 450 rupees, was bound to sow 225 *bigga*hs of land (held in farm by him from Rajah Kerut Singh,) with indigo from the *Fuslee* year 1249 to 1255 : but the claim is brought for three years only, 1249 to 1251, for which only we have to decide. The seed grown on these 225 *bigga*hs was to be delivered to respondent at fixed prices, viz. at 3 rupees per *maund* for that which should be delivered in January, and 2 rupees per *maund* for that of February : in the event of the land not being sown, seed was to be supplied, each year, at the rate of ten *maunds* per *bigga*h. Now, it is proved, that the land was not sown, and that no seed whatever was supplied : the alternative therefore of this breach of his engagement, becomes binding on appellant ; who, at the stipulated rate of 10 *maunds* per *bigga*h on 225 *bigga*hs, or 2,250 *maunds* of seed each year, making a total, for the three years, of 6,750 *maunds*, is responsible, at the prices fixed. In suing for damages, respondent estimates the value of the seed (6,750 *maunds*) which should have been supplied, at the market price of the day, viz. 6 rupees per *maund* ; and thus fixes it at rupees 40,500 ; but deducting the larger price agreed to be paid, viz. 3 rupees per *maund*, or one half, he claims the remaining moiety with interest.

We do not think this estimate of damages excessive. When appellant failed to furnish the seed, as promised, respondent had to purchase elsewhere, at the price of the day. This has been taken at 6 rupees per *maund*, and is not objected to by appellant : he has therefore paid 6 rupees a *maund* for what appellant agreed to furnish at 3 ; that is, he has paid rupees 40,500 for what he should have got for 20,250 ; and we think the difference, or rupees 20,250, may be fairly allowed as the amount of damages to which he is entitled.

The principal sudder ameen has given an arbitrary award of 4,518 rupees, inclusive of costs. He does not explain the principle of his calculation, nor is it easy to discover it. Whatever it may have been, we are satisfied it was wrong ; and, for the

reasons above detailed, we reverse his decision, and adjudge to respondent the sum of 20,250 rupees, claimed by him, with interest from this date.

All costs to be made chargeable to appellant.

THE 10TH JULY 1847.

PRESENT:

C. TUCKER, Esq.,

JUDGE.

J. HAWKINS, Esq.,

TÉMPORARY JUDGE.

PETITION No. 151 OF 1847.

IN the matter of the petition of Pursun Komar Thakoor, filed in this Court on the 30th March 1846, praying for the admission of a special appeal from the decision of Mr. T. Wyatt, judge of Rungpore, under date the 30th December 1845, reversing that of Opindur Chunder Nyaruttun, principal sudder ameen of Rungpore, under date the 26th December 1843, in the case of Shankishore Race, plaintiff, *versus* the petitioner, defendant.

It is hereby certified that the said application is granted on the following grounds:

The plaintiff was a joint sharer of the adjoining *pergunnahs* Bammunkundeh and Bazcedpore. The former *pergunnah* was sold by the collector, for arrears of revenue, and purchased by the petitioner, who having obtained possession of the *pergunnah*, through the civil court, under Clause 1, Section 28, Regulation 11, 1822, was declared by the plaintiff to have ejected him from certain lands belonging to the neighbouring *pergunnah* of Bazcedpore. The present suit was brought for recovery of the lands forming the subject of alleged dispossession.

The principal sudder ameen dismissed the action, and his decision was reversed by the zillah judge.

The petitioner now applies for the admission of a special appeal, on the ground that, under Clause 4, Section 28, Regulation 11, 1822, the other proprietors of the *mehal*, purchased by him at auction, should have been made parties to the suit, which they were not. The respondent's pleader meets this by saying, that his client was himself a proprietor of the sold *mehal*; and that, therefore, under Clause 3, of the same Section, it was not incumbent upon him to sue any other party than the purchaser.

We are of opinion that the other sharers of the property sold should have been made parties to the suit, in order that the Court having all the parties before them, might be in a position to pass the necessary orders regarding costs and compensation under

Clause 4. It is true that the plaintiff was himself a sharer in the *mehal* sold, but he does not sue as proprietor of *that*, but of a neighbouring *mehal*; and is therefore clearly in the position contemplated by Clause 4. We therefore annul the decrees of both the lower courts, and direct that the case be remanded to the court of the principal sudder ameen and be again placed on his file, after which, should the plaintiff fail to take the prescribed measures for the correction of his plaint, he will be liable to be nonsuited.

THE 12TH JULY 1847.

PRESENT:

C. TUCKER, Esq.,

JUDGE.

PETITION No. 37 OF 1846.

IN the matter of the petition of Lallah Rambuksh Singh and others, filed in this Court on the 20th February 1846, praying for the admission of a special appeal from the decision of the principal sudder ameen of zillah Shahabad, under date the 20th November 1845, affirming that of the moonsiff of Dhakace, under date the 31st December 1844, in the case of Madhoram and others, plaintiffs, *versus* Lallah Rambuksh Singh and others, defendants.

In this case the plaintiffs sued the petitioners for 49 *biggahs* and 12 *biswas* of land, situated in *mouzah* Tarunpore. The plaintiffs, however, by their own showing, are proprietors of only $\frac{1}{6}$ of the village, consequently they ought to have been nonsuited; but, instead of this, both the lower courts gave them a decree for the entire quantity of lands sued for. Special appeal admitted; decisions of both courts cancelled; and proceedings remanded, with directions to nonsuit the plaintiffs.

THE 12TH JULY 1847.

PRESENT:

C. TUCKER, Esq.,

JUDGE.

PETITION No. 297 OF 1846.

IN the matter of the petition of Lallah Rambuksh Singh, and others, filed in this Court on the 11th June 1846, praying for the admission of a special appeal from the decision of the acting judge of zillah Shahabad, under date the 9th March 1846, affirming that of the principal sudder ameen of that district, under date 5th December 1845, in the case of Lallah Rambuksh Singh, and others, plaintiffs, *versus* Myaram Tewarree, defendant.

This was a boundary dispute regarding 98 *biggahs* and 5 *biswas* of land, which the petitioners, plaintiffs, claimed as appertaining to *mouzah* Ootumpore, and the defendant as appertaining to *mouzah* Rajpore, in *pergumrah* Chounsah.

The lower courts dismissed the petitioners' claim on fanciful and unsatisfactory grounds, and without any local enquiry, which was essentially necessary in this case, to define the boundary line between the two villages.

I admit the special appeal therefore ; and, annulling the decisions of both the lower courts, remand the proceedings with instructions to dispose of the case, after local enquiries, so as to define the boundary line between *mouzahs* Ootumpore and Rajpore.

THE 12TH JULY 1847.

PRESENT :

A. DICK, ESQ.,

JUDGE.

CASE No. 87 OF 1846.

Regular Appeal from a decision of the Principal Sudder Ameen of Zillah Rajshahye, Moulvee Abdool Ali Khan.

TARNEE CHUNDUR PUKRASEE, KISHUN MOHUN
DAS, AND CHUNDURKANTH BUTTACHARJ,
APPELLANTS, (DEFENDANTS,)

versus

MR. ELIAS MARCUS, RESPONDENT, (PLAINTIFF.)

Wukeels of Appellants—Ram Pran Race and Bunsee Budun Mitr.

Wukeel of Respondent—Pursun Komar Thakur.

SUIT laid at Company's rupees 1,000, damages for indigo crop destroyed.

The investigation in this case, by the lower court, is by no means satisfactory. The case is therefore remanded.

The principal sudder ameen will depute a trustworthy person, or the *pergumrah ameen*, to draw a map of the land within the boundaries stated in the plaint; and then make the plaintiff point out the quantity of land cultivated in indigo, and measure it; then ascertain the quantity of produce by eye-witnesses, who saw the crop growing; and lastly, take evidence to prove that the defendants did destroy the crop: and, after considering any evidence the defendants may produce, in refutation, decide.

THE 13TH JULY 1847.

PRESENT:

C. TUCKER, Esq.,

JUDGE.

PETITION No. 109 OF 1846.

IN the matter of the petition of Buktawur Panday, filed in this Court on the 17th March 1846, praying for the admission of a special appeal from the decision of the acting judge of zillah Shahabad, under date the 16th December 1845, affirming that of the principal sudder ameen of that district, under date the 28th March 1845, in the case of Deyal Singh, plaintiff, *versus* Buktawur Panday, defendant.

In this case, the petitioner was sued by plaintiff, for two *annas* out of four *annas* of one-third of *talook* Buddore, and he laid his plaint at rupees 2,286-13-7-4, including *wasilat* and interest thereon, up to the date of institution of suit. The plaintiff obtained a decree for the property from the principal sudder ameen, but the amount *wasilat* and interest was considerably reduced; nevertheless the defendant, petitioner, was charged with costs on the entire sum, without reasons assigned for thus acting contrary to the usual practice of the courts, which is, in such cases, to award costs on the amount decreed. This decision was affirmed by the judge.

I admit the special appeal on the above grounds, and remand the proceedings to the judge, who will either correct the error; or, in case he should be of opinion the entire costs are justly leviable from the petitioner, will record his reasons for the same.

THE 15TH JULY 1847.

PRESENT:

A. DICK, Esq.,

JUDGE.

CASE No. 374 OF 1845.

Regular Appeal from a decision passed by Mr. James Reily, Principal Sudder Ameen of Dacca, November 7th 1845.

MUSST. OMA CHOWDRAIN AND GOPEENATH RAE, APPELLANTS, (DEFENDANTS,)

versus

MUSST. INDURMUNEE CHOWDRAIN, WIDOW OF GOPEE MOHUN RAE, AND MOTHER AND GUARDIAN OF RAE MOHUN RAE, RADEEKA MOHUN RAE, AND RADHANATH RAE, RESPONDENT, (PLAINTIFF.)

Wukeels of Appellants—Abbas Ali and Tarik Chunder.

Wukeel of Respondent—J. G. Waller.

SUIT laid at Co.'s rs. 27,970, 2 *annas*, 0 *pie*, for possession of a share in a zemindaree, and on certain lands, with mesne profits, by cancelling a deed of sale and a deed of gift.

The particulars of the case, and the judgment of the lower court, are detailed in the following decision of the principal sudder ameen :

‘ Plaintiffs declare, that they succeeded in getting a decree against Soobhuddra’s husband, Jeewun Kissen Baboo, for rupees 57,599-7-9 ; that after his demise, she, in lieu of that debt, executed a bill of sale on the 17th *Assar* 1249, and sold certain estates of her husband, which defendants, on the pretext of *benamnee* deeds, alleged to have been executed by Jeewun Kissen in their favor, withhold from plaintiffs. Plaintiffs pray therefore for possession and *wasilat*.

‘ Oma contends, Jeewun Kissen had long previously separated from Soobhuddra, and had no issue ; he sold some of the estates to me, and had the deeds registered. Jeewun Kissen was indebted to me, and sold the estates to me on the 21st *Sawun* 1245, and I had been in possession since. Soobhuddra was never in possession. Jeewun Kissen adopted me when I was a mere infant. Kunuk Munnee, whom Jeewun Kissen had in keeping, regarded me with affection, and she left a part of her property to me. I was not otherwise related to her. Jeewun Kissen freely acknowledged that he had adopted me.

‘ Gopeenath contends, Jeewun Kissen had, with the view to the perpetuating of the service of the idols, on the 21st *Sawun* 1245, made a gift of certain lands to the idols, and appointed me as the *sebayut*.

‘ POINTS FOR ADJUDICATION.—Is the sale in favor of Oma, and the gift in favor of Gopeenath *bona fide* transactions ?

‘ From the following reasons we arrive at the conclusion that the alleged sale and gift were not *bona fide* transactions ; but fabricated with the view to save the property from creditors.

‘ *First*.—The deeds alluded to bear the names of seven witnesses ; of whom two have died, and five have been examined. Of these, one is Dhurmonarain Sirkar, the deceased baboo’s *mookhtar* and *dewan* ; all these unite in declaring that the baboo had executed these *benamnee* deeds, a day or two *anterior* to the date of the registry. Defendants’ witness, Obhuy Chunder Surina, also states that the deeds are *benamnee*.

‘ *Second*.—This evidence, borne by the witnesses, is corroborated by the following points : First, that Jeewun Kissen was greatly in debt ; which is proved by plaintiff’s having obtained a decree against him for rupees 55,644-11-9, and a co-sharer, Poornomonee Chowdhrayn, having also obtained a decree for rupees 18,548-7-11. *It is not improbable* therefore that Jeewun Kissen, being so largely indebted, should fabricate *benamnee* deeds, with the view to save his property from his creditors. Secondly, that the deeds in question were registered on the day that plaintiff’s plaint was engrossed on stamp paper ; from which it may be inferred that defendants, having heard of the purchase of the stamp paper for the plaint, drew up the deeds, and had them registered. In addition to this, Brojomohun Race, formerly a *unkeel* in the provincial court of appeal, declares that Jeewun Kissen had, in

1245, sent him the drafts of the *kubaleh* and the *deboottur putr*; that he had that year returned from a pilgrimage to Cuttack, and had in *Sawun*, the day after the full moon, or the day after, arrived at his *baree*; that he came to Dacca subsequently and inspected the drafts of the deeds. Now, the almanac for 1245, shows that the full moon of the *Jhoolun* occurred on the 22nd *Sawun*. Should the witness have come to Dacca, and inspected the drafts subsequently to that event, how can it be admitted that the deeds were executed on the 21st *Sawun*? We gather from this, and from the date of the registry, that the deeds were antedated. 'Dhurmonarain, who was Jeewun Kissen's *mookhtar* and *deewan*, deposes that he had charge of all his documents; that when Soobhuddra visited Calcutta, he accompanied her; and he left the documents with Gopeenath, having taken a receipt from him. Witness has filed this receipt; and this accounts for the deeds having come into Gopeenath's possession.

'*Third.*—The *kubaleh* in Oma's name proves that no money was paid, or received, in consideration of the sale. It states that Oma had to receive 6,500 rupees, and the interest rupees 4,750; and that the property was sold for rupees 11,250. In a *benamee* transaction, where is the difficulty to make such a statement? The difficulty would have been to have paid the money; and this accounts for the nature of the transaction.

'*Fourth.*—Oma confesses that Jeewun Kissen adopted her, and placed her with his concubine Kunuk; that he gave her in marriage; and that her (Oma's) daughter has been married to Gopeenath. Is it credible that Jeewun Kissen should be eleven thousand, two hundred and fifty rupees indebted to Oma!!!

'*Fifth.*—Jeewun Kissen was in possession of the property during his entire life. The proofs are: First, Jeewun Kissen survived the execution of the deeds nearly three years. He did not in all this time make *intakal*; that is substitute Oma's or Gopeenath's name in the collector's books in lieu of his own, as proprietor of the estates. Secondly, that the witnesses to Oma's *kubaleh*, that is Dhurmonarain, who was *mookhtar* and *deewan* to Jeewun Kissen, and the other witnesses, prove that Jeewun Kissen continued during life to hold possession of the estates. Thirdly, that the *jumma-khurch* for 1246 and 1247, proved by the witnesses to be Jeewun Kissen's, establish the fact of his having been in exclusive possession. The witnesses prove farther, that a part of this *jumma-khurch* was written by Gopeenath himself. Jeewun Kissen's *mookhtarnamah* dated 31st *Sawun* 1245, and the *ameen's roidaud* dated 21st *Aghun* 1245, and four *ryuts' kuboolyuts* of that year, show that *kismut* Oolookandee &c., in *pergunnah* Mokimabad, was decreed in favor of Jeewun Kissen; and that he received possession of them through the *thannah ameen* and his *mookhtar*, and that the *ryuts* gave *kuboolyuts* in his name. Had Oma really bought the estates on the 21st *Sawun* 1245, it was not probable that Jeewun Kissen would have taken possession of the

decreed lands. Defendants have filed some *suddler dakhilas*, but Oma's name is not mentioned in those of 1245 ; and she has not filed those of 1246. Of what avail are the *dakhilas* for the *subsequent* years ? and of what avail are *dakhilas* alone, whilst the estate itself stands recorded in the name of another ?

Defendants have examined some witnesses to prove their possession of the estates ; but they are all their servants, or *ryuts*, or dependents. And though Gourcekanth Deo, and Pandub Das, and Jynarain Sircar, and Ramnath Deo, depose that Jeewun Kissen signed the *kubaleh* and *deboottur putr* in their presence, their names are not in the deeds. But, as the witnesses whose names are in the deeds, declare that the deeds were *benamee*, of what avail is evidence respecting Jeewun Kissen's signature alone ?

Oma's mother, Parbuttee, deposes that, when she made Oma over to Jeewun Kissen, she gave 1,800 rupees. But can it be credited that one, who consigned her own offspring to another, that she might be maintained and provided for, should have this money to give : none but the destitute part with their children in this way. It was not an adoption.

Soobhuddra's *kubaleh* to plaintiff, dated 17th Assar 1249, has been registered. The witnesses also prove it. Nor has Soobhuddra disputed the sale ; nor do defendants deny the sale. It is not necessary therefore to demand further proof of her sale to plaintiffs.

Oma contends, that the orders of the Sudder, under Regulation 2 of 1806, was, that if the plaintiff's claim be decreed, and the amount is not recovered from Jeewun Kissen's other property, then should they sue to render Oma's *kubaleh* void, that the Court's order shall not operate to their detriment ; that as plaintiffs have not executed the decree against Jeewun Kissen's other property, plaintiffs cannot sue to render Oma's *kubaleh* void. But it has been proved, that the property referred to will not liquidate plaintiffs' claim. Indeed, Oma's property inclusive has not discharged the debt. Under these circumstances, the Sudder's order will not bar the present claim. Besides, that was a summary order, and will not avail in a regular suit. But as defendants' right and title to the property has not been established, of what avail is their protest against the acts of the real heirs ?

The claim is therefore decreed against Oma and Gopeenath ; and *wasilat* from 17th Assar 1249, with costs and interest. The other defendants are exonerated : plaintiffs paying their costs. It is not necessary to pass any orders on Poornomonee's petition. This decree shall not operate to her prejudice.

In appeal, these several pleas were urged for appellants :—*First*, the plaintiffs should have been nonsuited, because the suit involves two distinct claims : the right to cancel a deed of sale, and to cancel a deed of gift ; the purchaser and the donee being two different persons. *Second*, the suit was estimated and laid illegally. *Third*, the

sale to them, on which plaintiffs claim, is illegal according to Hindoo law: the widow, who sold to them, having no power to alienate property inherited from her husband. *Fourth*, the sale, with respect to the two properties in question, illegal, because the seller was not in possession. *Fifth*, the decree, for the amount of which the estates were sold, was collusive, and consequently the sale, and therefore it is invalid. *Sixth*, the sale and gift of appellants were *bona fide* real transactions, and not fictitious; and therefore should be upheld.

On the part of respondents it was argued, that the *first* plea was invalid, because the foundation of the suit was one only, viz. a right of purchase might legally involve several distinct rights of different persons. The *second* plea could not be heard, as it had not been objected to in the answer to the plaint. The suit has however been properly laid. *Third*, that the sale, having been made to pay her husband's debts by the widow, was perfectly legal. *Fourth*, the parties are Hindoos; and, according to the *shaster*, a sale, even without possession, is valid. *Fifth*, there was no collusion, the plaintiffs had obtained a decree against the widow's husband, which he appealed, and died. The widow then withdrew the appeal, and sold the estates to avoid heavier liabilities from continuing to contest the demand. *Sixth*, the sale and gift of appellants have been clearly fictitious and fraudulent to evade demands of creditors; and therefore were properly declared invalid by the principal sudder ameen.

The presiding judge having found two apparently conflicting decisions, of two full benches of the Sudder Court, respecting the first plea, referred the point for decision to a full sitting of the six judges, in the following words:

'A. obtained a decree against the deceased husband of B.; in satisfaction of which B. sold to him the estates of her late husband, including the two properties, the subject of this suit, which were in the possession of C. and D. A. sues on his deed of purchase to dispossess C. and D., and to cancel the deeds on which they respectively claim to hold—C. on a deed of purchase, D. on a deed of gift or assignment for religious purposes. The question for consideration and decision, is simply this. Should A.'s suit, founded on a single document, the ground of claim, be nonsuited; because it involves the reversal of two distinct documents, also grounds of claim for the defence. The first precedent is the case No. 259 of 1843, [page 110, Sudder Dewanny Decisions 1845] decided by Messrs. Rattray, Tucker and Barlow. The second precedent is case No. 225 of 1843, decided by Messrs. Reid, Dick and Jackson [page 108, Sudder Dewanny Decisions 1846.]'

The Court* after hearing the pleaders on both sides, and consideration of the case and the two precedents, came to the opinion, 'that the precedent No. 225 of 1843, is exactly in point with this case: both

* (Present R. H. Rattray, C. Tucker, Abercrombie Dick, Sir Robert Bulow, Welby Jackson, and J. Hawkins.)

suits being founded on a deed of sale, affecting the property in suit; and that, therefore, both suits were properly instituted and entertained. The 1st precedent cited, No. 259 of 1843, they do not consider so strictly in point; because the claim in that suit was a money decree merely, without any specific lien on any particular property.

The *first* plea having thus been disposed of, and the suit declared legally instituted and entertained, the presiding judge proceeded to the trial and decision of the appeal.

The *second* plea of appellants is erroneous; for the suit has been properly laid at three times the revenue payable, rateably, on the share of the zemindaree claimed, and at the amount of the sale sought to be cancelled, and at the estimated value of the lands assigned by the *hibbehnameh*, or deed of gift. As to the objection of the respondents, that the plea, not having been advanced in the answer to the plaint, could not now be heard, it is necessary to observe, that the objection is valid, only so far as it might affect the jurisdiction of the courts of first instance, and appellate; but not the liability of the case to nonsuit.

On the *third* plea, the following question was put to the pundit of the Court: 'Have Hindoo widows the power to alienate the whole of the landed property, inherited from their husbands, for payment of their husbands' debts, without the consent of the next heirs to the said property, relatives of the husband.'

To which the pundit answered: 'A Hindoo woman, who has inherited the property left by her husband, may alienate the whole of it to pay his debts; because so inheriting her husband's property, she is bound to pay his debts.'

The pundit refers for his authority to Nared Munce, as stated in the Digest of Jagunnatha, and to be found in Colebrooke's translation: [pp. 315 and 316, volume I.] 'If the assets of the husband have been received by the wife, she must pay the debt.' And again: 'and so must a debt be paid by a childless widow, who has accepted the care of the assets, even though she have not accepted the burden of the debts, for she is successor to the estate.'

The *fourth* plea is utterly untenable under Hindoo law, as is evident from the whole tenor of the law on rescission of sale, laid down in the Digest of Jagunnatha, especially the two texts of Nareda cited therein: [pp. 317 and 318, volume II, Colebrooke's translation.] 'When a vendible thing, sold for a just price, is not delivered to the purchaser, this is called non-delivery of a thing sold, a title of judicial procedure.' And again. 'He then, who having sold vendible property for a just price, delivers it not to the buyer, shall be compelled, if it be immovable, to pay for any subsequent damage, as the loss of a crop or the like; and if movable for the use and profits of it.' Here are express penalties for non-delivery, but not a word about invalidity on that account.

The *fifth* plea is one which cannot be adduced by appellants, as they are not heirs, and cannot call in question the propriety and honesty of the acts of the widow.

On the *sixth* and last plea, the Court observe, that neither the sale nor the gift can be upheld as real and *bona fide* transfers; because possession was not given, nor mutations of names as proprietors effected in the Government registries; and, *anent* the sale, it is incredible that the appellant Oina, a slave girl of Jeewun, should have had the means of lending him the alleged sum of 11,000 rupees and upwards. As to the evidence of the witnesses who attested the deeds, and have testified to their fraudulent and fictitious character, and on which the principal sudder ameen has laid so much stress, it is utterly unworthy of the least credit. Men who thus shamelessly proclaim their own participation in dishonesty, incapacitate themselves from bearing evidence. Were the testimony of such men admissible, there would be no security in any contracts.

The Court therefore, deeming the claim of the respondents valid, and the sale and gift of appellants fictitious, dismiss the appeal with full costs, and affirm the decision of the lower court.

THE 15TH JULY 1847.

PRESENT :

R. H. RATTRAY, ESQ., and

SIR R. BARLOW, BART.,

JUDGES.

W. B. JACKSON, ESQ.,

TEMPORARY JUDGE.

CASE No. 194 OF 1846.

Special Appeal from a decree passed by the 2d Principal Sudder Ameen of Tirhoot, Ushruf Hosein, August 15th 1844; modifying one passed by the Sudder Ameen of Mozufferpoor, August 22d 1843.

MUSST. JYE KOWUR, APPELLANT, (DEFENDANT,)

versus

MUSST. LUKHPUTTEE KOWUR, RESPONDENT,

(PLAINTIFF.)

Wuheel of Appellant—E. Colebrooke.

Wuheel of Respondent—Ramapershad Racee.

THIS suit was instituted by respondent on the 12th February 1842, to recover from appellant, the widow of Bhyroo Dutt, deccased, certain lands in *mouzahs* Kantee and others, in virtue of a deed of sale (or *kubaleh*): amount value Company's rupees 750-15-10.

The special appeal was admitted by Mr. J. F. M. Reid, on the 4th July 1846, who recorded the following certificate:

‘Appeal admitted to try whether Hunooman Dutt’s sale of the share of his brother Bhyroo Dutt, husband of the petitioner, in *monzahs* Kantee and Madhubchundpoor, to Torul Singh, husband of Musst. Lukhputtee Kowur, can be upheld: Hunooman Dutt having no power of attorney from Bhyroo Dutt, authorizing him to sell for him.’

On perusal of the papers and the evidence in this case, it appears that Bhyroo Dutt, lately deceased, husband of the appellant Musst. Jye Kowur, was present and consenting to the sale of the lands to Torul Singh. We therefore see no reason to interfere with the lower court’s orders; and the appeal is dismissed, with costs payable by appellant.

THE 15TH JULY 1847.

PRESENT:

J. HAWKINS, Esq.,

TEMPORARY JUDGE.

PETITION No. 338 OF 1847.

IN the matter of the petition of Domun Saha, filed in this Court on the 16th June 1847, praying for the admission of a special appeal from the decision of Mr. Smelt, judge of East Burdwan, under date the 18th March 1847, confirming that of Mr. Bell, moonsiff of Burdwan, under date the 17th November 1846, in the case of the petitioner plaintiff *versus* Mrs. Thomick, defendant.

It is hereby certified that the said application is granted on the following grounds:

The plaintiff sued to compel the defendant to open a drain and pathway from his house, which she had closed. The moonsiff and judge decided against him. The latter authority thus records his opinion:—‘The moonsiff having proceeded in person to examine into the merits of the case, gave his judgment against the plaintiff. It appears from the proceedings held before the moonsiff, that the drain and pathway were entirely of a private character, and both were a nuisance to the defendant, respondent. A drain and pathway had existed no doubt; but as they were not of right, but by sufferance, and now being a great inconvenience to the defendant she had stopped them. I see no reason whatever to interfere with the moonsiff’s decision, and uphold it, dismissing the appeal with costs.’

The judge’s decree is incomplete. The right to stop a drain and pathway must be very clearly made out, ere it can be admitted. Now,

it appears incidentally in the proceedings, that the defendant has become proprietor of the property near the drain and pathway at a recent date, and the judge himself says 'a drain and pathway had existed no doubt.' The period for which the drain and pathway have been in existence, and the exact date of the defendant's entering upon possession of the property, are essential to the right determination of this case. Both of these are wanting in the judge's decree.

I admit the special appeal, and remand the case to the judge, in order that it may be decided *de novo*, with reference to the above remarks.

THE 15TH JULY 1847.

PRESENT :

R. H. RATTRAY, Esq., and

SIR R. BARLOW, BART.,

JUDGES.

W. B. JACKSON, Esq.,

TEMPORARY JUDGE.

CASE No. 189 OF 1846.

Regular Appeal from a decree passed by the Additional Judge of Behar, F. Gouldsbury, August 15th 1836.

ALEXANDER IMLACH, APPELLANT, (DEFENDANT,
WITH OTHERS,)

versus

SYUD ABDOOLLAH, RESPONDENT, (PLAINTIFF.)

Wukeel of Appellant—Charles Glas.

Wukeel of Respondent—Hamid Rusool.

THIS suit was instituted by respondent on the 24th December 1831, to recover from appellant the sum of Sicca rupees 7,351-13, being the value of a third portion of Kusbeh Rah, paid by respondent to Zuhoor-o-nissa Khanum, under the following circumstances : In 1229 F., (1822) the executors of Anwur Begum (originally John Palmer, Charles Trebeck, and Colonel Henry Imlach) sold the estate of Kusbeh Rah to respondent for Sicca rupees 14,995. In 1828, Zuhoor-o-nissa obtained a decree for a third of the property, and sued them all, executors and respondent, for possession. While this suit was still pending, respondent entered into an amicable arrangement with Zuhoor-o-nissa; and paid her Sicca rupees 6,751-11, to withdraw her claim, and resign her rights and interests, in the share

for which she held a decree, to him. A *razeenamah* was executed in conformity with this ; and all further judicial proceedings ceased. For the sum thus paid, with 600 rupees arising from costs and interest, respondent brought an action against the surviving executors, and Alexander Imlach, the appellant, as the heir of Colonel Henry Imlach, then demised.

On the 15th August 1836, the decree was passed, which is now before the Court in appeal.

We observe, that the appeal was filed on the 27th August 1846 ; and that it becomes necessary to determine whether appellant, after such a lapse of time can legally be heard. His right to a hearing by the Court is further questioned, on the ground of no defence having been filed or pleaded in the lower court, in which the decision against him was passed *ex parte* : a petition only having been presented by him in the course of the proceedings.

The claim of respondent against appellant is based on the assumption, that he is an executor to the estate of the late Anwur Begum ; but there is nothing to shew that he can be so considered : on the contrary, it appears, that he applied to this Court in 1830, to draw some money, then in deposit, on account of the estate, in the capacity of executor ; which application was rejected on the ground, distinctly set forth, of his not being an executor. The decision of the additional judge, now before us, seems to rest on the simple fact of his (appellant,) being the heir of his father, who was an executor ; and, consequently, liable to what his father had been, in that capacity.

That the decision is erroneous, there is no doubt : the only point open to discussion, is, as to whether appellant can be heard. We find, that in execution of the decree of the zillah judge, an appeal was lodged in this Court by appellant ; and that the presiding judge (Mr. Reid) refused execution, on the ground of the irregularity exhibited on the face of the proceedings ; and directed appellant to bring a regular appeal against the judgment passed, within one month from the date of the order (then recorded) notwithstanding the lapse of time since that judgment had issued. This order, passed under Construction No. 1048, has unquestionably brought the case within the court's legal cognizance ; and as we regard the decision of the lower court to be evidently based on a mistaken principle of law, and to be in direct opposition to the order of this Court of 1830, which refused the admission of appellant as an executor to this estate, we are of opinion—the peculiar circumstances of the case considered—that appellant may be heard ; and, with reference to the facts stated, we think the decree appealed against should be reversed in regard to him.

We reverse the decree accordingly, with costs chargeable to respondent.

THE 15TH JULY 1847.

PRESENT :

J. HAWKINS, Esq.,

TEMPORARY JUDGE.

PETITION No 203 OF 1847.

IN the matter of the petition of Purkhit Sircar and others, filed in this Court on the 6th April 1847, praying for the admission of a special appeal from the decision of Mr. A. Smelt, judge of East Burdwan, under date the 14th January 1847, reversing that of Syul Fuzl Rubbee, principal sudder ameen of East Burdwan, under date the 12th September 1846, in the case of the petitioners,' plaintiffs, *versus* Purmanund Raee and others, defendants.

It is hereby certified that the said application is granted on the following grounds :

The following is the decision of the judge in this suit, which was instituted for possession of an eleven annas' share of a tank, &c., and decided by the principal sudder ameen in favor of the plaintiffs : 'The plaintiffs urge their right to the possession of the share in dispute, and to hold it *khirajee*, or liable to revenue, in virtue of *pottahs* granted to them by the farmers in the year 1195 B. S. ; whilst the defendants (appellants) urge their right to hold the share in dispute, in virtue of a *lakhiraj sunnud*, granted by Maharajah Teloke Chund Buhadoor on the 23rd *Bhadun* 1174 B. S., and which grant bears the signature of Mr. John Graham ; and, from the enquiries made from the collector's records, there seems no reason whatever to doubt the validity of the Maharajah's grant. The *pottahs* produced by the plaintiffs, respondents, are to my judgment invalid ; and, under the circumstances above stated, I set aside the decision of the principal sudder ameen, and decree the appeal.'

From the above order, the present application for the admission of a special appeal has been preferred.

It would have been satisfactory to this Court, in determining upon the propriety of complying with the application or otherwise, had the judge referred to those particulars which are considered as essential to the validity of a *lakhiraj* grant, so that the Court might have had before it the test applied by the judge to the document which he has pronounced valid. He should have stated also why he considers the *pottahs* produced by the plaintiffs to be invalid, instead of merely saying that to his judgment they were so.

But, apart from these considerations, the judgment is incomplete, inasmuch as there has been an enquiry into, and a judgment upon, a *lakhiraj* tenure, in the absence of the zemindar, whose rights are involved in the determination of the question. The plaintiffs, in default of suing the zemindar, or taking the necessary measures for bringing him as a party after the suit had commenced, should have been nonsuited; but there should have been no enquiry into the merits of the grant in the absence of the zemindar.

I accordingly admit the special appeal, and remand the case to be dealt with as above indicated.

THE 15TH JULY 1847.

PRESENT :

C. TUCKER, ESQ.,

JUDGE.

PETITION No. 620 OF 1845.

IN the matter of the petition of Joykishen Mookerjea and Rajkishen Mookerjea, filed in this Court on the 25th September 1845, praying for the admission of a special appeal from the decision of the additional judge of zillah Hooghly, under date the 29th July 1845, affirming that of the additional principal sudder ameen of that district, under date the 30th September 1844, in the case of Joykishen Mookerjea and Rajkishen Mookerjea, plaintiffs, *versus* Gudadhur Pershad Tewary and others, defendants.

In this case the courts below, though decreeing to the plaintiffs possession of lands, of which they had been dispossessed by the defendants, refused to award *wasilat*, on the plea that the plaintiffs had not furnished sufficient data for fixing the amount. This is contrary to the invariable practice of the courts. If any doubts arise as to the amount of *wasilat*, the same are determined by appointing an *ameen*, to ascertain the actual receipts in the *mofussil*. This application therefore is admitted; and the case having been brought forward, the decisions of both the lower courts are annulled; and it is ordered, that the proceedings be returned to the judge, who will send the case to one of the principal sudder ameens of his district, with orders to ascertain the *wasilat* due to the plaintiffs on the lands decreed to them, from the date of their dispossession up to the date of the institution of the suit; from which latter date to the date on which they may regain possession, the *wasilat* can be given at the same rate, in execution of the decree.

THE 15TH JULY 1847.

PRESENT :

C. TUCKER, Esq.,

JUDGE.

PETITION NO. 135 OF 1846.

IN the matter of the petition of Ilahee Bibi, filed in this Court on the 23rd March 1846, praying for the admission of a special appeal from the decision of Raee Radha Govind Shome, principal sudder ameen of zillah Hooghly, under date the 23rd December 1845, reversing that of Sudderooddeen Ahmed, moonsiff of Rajapoor, under date the 18th September 1845, in the case of Nittanund Koond and others, plaintiffs, *versus* Ilahee Bibi and others, defendants.

A special appeal in this case was admitted by me, on the 12th March 1844, and the proceedings remanded for re-investigation.

Ilahee Bibi, the petitioner, obtained a decree for fifty *bigdahs* of land, within defined boundaries; and, in putting her in possession, the plaintiffs objected that the *ameen* had given her what did not belong to her under the decree. They were referred to the civil court, and instituted this suit for the disputed property.

The point at issue, viz. whether the property claimed was, or was not, within the boundaries laid down in Ilahee Bibi's decree not having been clearly stated, the case was remanded with the following orders, viz. to enquire, *first*, 'whether the *khals* or creeks claimed by the plaintiffs are within, or without, the boundaries of Ilahee Bibi's decree of 3rd May 1838; *second*, whether, if within them, the plaintiffs have any special title or right to them and the *julkur* rent derivable therefrom, which may be the case, notwithstanding the land, according to the boundaries, belongs to Ilahee Bibi.'

In the re-investigation which took place, the moonsiff went to the spot; and, after a regular survey of the premises, recorded that there was no doubt whatever of the creeks being within the boundaries of the property decreed to Ilahee Bibi, and that the plaintiffs could shew no special title to them. He consequently dismissed the plaintiffs' claim. On appeal the principal sudder ameen, Raee Radha Govind Shome, evaded the question of boundaries; but went into a long argument to prove that the creeks belonged to the plaintiffs, and reversed the decision of the moonsiff. As the course adopted by the principal sudder ameen in the disposal of this case, is adverse to the instructions conveyed by this Court, when remanding the proceedings for further enquiry, I admit a second special appeal, and again remand the proceedings, in order, that one of the present principal sudder ameens may take up the case, and dispose of it under the original instructions of this Court of the 12th March 1844.

THE 17TH JULY 1847.

PRESENT :

W. JACKSON, Esq.,

TEMPORARY JUDGE. • •

CASE No. 46 OF 1845.

Regular Appeal from a decision passed by Mr. C. Mackay, Principal Sudder Ameen of Mymensing, dated 16th December 1844.

RANEE HURSOONDREE DIBBEA, WIDOW OF GOPEE-NATH SINGH, APPELLANT, (PLAINTIFF,)

versus

RAJAH BISHENNATH SINGH, RESPONDENT, (DEFENDANT.)

Wukeels of Appellant—J. G. Waller and Pursun Komar Thakur.

Wukeels of Respondent—Kishen Kishore Ghose, E. Colebrooke, and Gholam Sufdur.

CLAIM for division (*butwareh*) of the family estate, 14 *annas pergunnah* Soorung, and separation of her share of 5 as. 6 g. 2 c. 2 k. in the same.

The plaintiff is widow of Gopeenath Singh deceased, who, with his two brothers Bishennath Singh, defendant, and Jugurnath Singh, were sons of Rajah Raj Singh, who held in his possession the entire estate mentioned in the plaint, as his raj. The plaintiff contends that, on his death, the estate became the joint property of his three sons, in equal portions; and that she, as the widow of one of the sons, is entitled to $\frac{1}{3}$ d, and under the law to have that share divided off.

The defendant objects, that, by the custom of the family, the estate descends by primogeniture, and that widows do not succeed; but on the death of an elder brother, without leaving a son, the next brother succeeds to the raj.

On the 16th December 1844, the principal sudder ameen decided that the family custom pleaded by the defendant was established, and dismissed the claim of the plaintiff. From that decision, the plaintiff appeals, urging that the decision is not borne out by the record.

That the estate in question, differs in many respects from a common zemindaree, there is no doubt: it is situated on the north bank of the river Soomegguree, and includes part of the hills and wild country adjoining, inhabited by the *Garrow* tribes, a race perfectly distinct from the people of Bengal. Several royal *firman*s are filed, shewing that it was granted to Rajah Ramjeeewun, as a *jageer*, in the year 1060 H.; and was subject to a *peshcush* or

tribute : and from a report of Mr. David Scott, of the year 1820, it appears that the revenue now paid for it is this very *peshcush*, not a sum calculated on the assets of the land as in other zemindarees. It is further established, that in no one instance has the rule of succession by primogeniture been set aside since the grant : on the contrary, It seems that Raj Singh, the father of the defendant Bishennath Singh, succeeded his elder brother Kishwur Singh, notwithstanding that the brother left a widow, who, under the usual practice of Bengal, would have succeeded, but for the family usage pleaded. The only instance of *butwareh* of this estate which is pleaded, is the separation of a 2 *annas*' from the 14 *annas*' share which now constitutes the raj; but I find that this 2 *annas*' share was in fact certain villages, which were bestowed as dowry on a daughter by a former Rajah, which, at the decennial settlement, were separately settled with the descendants of her husband, and have since borne the name of the 2 *annas*' share. I am satisfied with the evidence in support of the family usage. But the plaintiff files papers shewing that she has been actually admitted to a joint share in the collections, which have, in many instances, been made in her name jointly with that of the defendant and the third brother's widow ; that the plaintiff has paid the Government revenue, and has had her name entered in the collector's books as a $\frac{1}{3}$ d sharer ; and further, that she has sued a tenant of the estate for $\frac{1}{3}$ d of the rent due from him, and has obtained a decree for it, with the consent of the defendant, Bishennath Singh. It remains to decide, whether these admissions, by the defendant, are such as to establish the right of the plaintiff to the $\frac{1}{3}$ d share, and the division sued for. It is to be observed, that the claim is for the division, not for possession of the share ; but the division cannot be awarded, unless the right is established. I do not think the neglect and supineness of the defendant in the management of his affairs, which has allowed the plaintiff to get her name entered, and to obtain a partial possession, sufficient to set aside the established usage of the family, which has been handed down for thirteen generations. Even if it be supposed, that the defendant intentionally permitted the introduction of the name of plaintiff into the collections as a sharer, it is to be considered that he had no authority to convey to her any right to the prejudice of his heirs : it was not optional with him to break through the family usage ; and if the plaintiff has obtained a kind of possession, it can only be by sufferance, not by right. I think it, however, most probable, that the plaintiff has effected her object by intriguing with the defendant's servants and without his knowledge. However, this may be, the right of the plaintiff, to the $\frac{1}{3}$ d share has not, in my opinion, been established ; and the principal sudder ameen was right in dismissing her claim. Ordered, that the decision of the principal sudder ameen be confirmed. Costs against the plaintiff.

THE 17TH JULY 1847.

PRESENT :

C. TUCKER, Esq., and

SIR R. BARLOW, BART.,

JUDGES.

J. HAWKINS, Esq.,

TEMPORARY JUDGE.

PETITION No. 761 OF 1845.

In the matter of the petition of Hur Chunder Nath and others, filed in this Court on the 17th November 1845, praying for the admission of a special appeal from the decision of Thomas Tayler, Esq., judge of Mymensingh, under date the 16th August 1845, affirming that of Kazeer Ousaf Ali, sudder ameen of the said zillah, under date the 2nd June 1845, in the case of Nubboo Comar Chowdhree and others, plaintiffs, *versus* Hur Chunder Nath and others, defendants.

In this case the plaintiffs are purchasers at a sale, made for the recovery of sums embezzled by the treasurer of zillah Mymensingh. The defendants are dependent *talookdars* within the estate purchased by the plaintiffs.

The plaintiffs, without issuing notice to defendants under Section 9, Regulation 5 of 1812, proceeded to fix the *jumma* demandable from them, under Section 5, Regulation 4 of 1794, at rupees 800. The defendants pleaded a fixed *jumma* of rupees 208, 4 *annas*, 7 *gundahs*, and 2 *cowrees*. The lower courts decided that the defendants' plea of a right to hold at a fixed *jumma* was not established, and deputed an *ameen* to measure and assess their lands at the *pergunnah* rates, after allowing a reduction of 20 per cent. for expences of collection, and *malikana* or proprietary allowance: and the amount, thus assessed, to be payable from the date of the notice, issued to the defendants by the plaintiffs, under Section 5, Regulation 4, 1794.

The petitioners, defendants, applied for a special appeal on two grounds:—*First*—That the decision of the lower courts was opposed to Sections 9 and 10, Regulation 5 of 1812. *Second*—That the proceedings were contrary to Section 5, Regulation 4, 1793, inasmuch as a supplementary plaint having been received from the plaintiffs, they, the defendants, should have been allowed the opportunity to file an answer to it, which they were not.

We are of opinion, that the section and regulation under which this suit has been brought and decided is inapplicable to the case, the real object of which is to break up a *talookdarry jumma*, and enhance the rents heretofore paid to the zemindar, for which the law quoted gives no warrant; whilst the decision of the court,

awarding payment of the enhanced rent from the date of the notice, is directly opposed to Section 10, Regulation 5, 1812. The lower courts should rather have followed the precedent in the case of Musst. Deb Ram and others, appellants, *v.* Ramnarain Nag, respondent, decided 24th March 1831, (*vide* page 102, volume V. Sudder Dewanny Reports) and merely decided the question of right of the plaintiffs to enhance the *jumma* payable by the defendants; and if that question were decided in plaintiffs' favor, leaving them to proceed to fix the *jumma* in the mode prescribed by Section 9, Regulation 5, 1812. We therefore admit the special appeal; and, annulling the decisions of the lower courts, remand the proceedings for re-trial as above indicated.

THE 19TH JULY 1847.

PRESENT :

R. H. RATTRAY and
A. DICK, ESQRS.,

JUDGES.

W. JACKSON, ESQ.,

TEMPORARY JUDGE.

CASE No. 235 OF 1846.

Special Appeal from a decree passed by the first Principal Sudder Ameen of Tirhoot, Niamut Ali Khan, March 29th 1845; reversing a decision passed by Dataram Raee, Sudder Ameen, February 29th 1844.

BANA KOWUR AND ANOTHER, APPELLANTS, (DEFENDANTS,)

versus

ASMUN KOWUR, RESPONDENT, (PLAINTIFF.)

Wukeel of Appellants—Rama Purshdd Raee.

Wukeels of Respondent—E. Colebrooke and Hamid Rusool.

THIS suit was instituted by respondent on the 6th January 1841, to recover from appellants Company's rupees 693-13-4, being half the value of 75 head of cattle, sold for arrears of revenue for which he (*respondent*) was not liable.

The special appeal was admitted by Mr. Charles Tucker, on the 18th September 1846, who recorded the following certificate :

'In this case, Talibur Kowur and others held a farm from the collector of Monghyr, under the security of Fukeer Kowur. Ultimately, the property of Fukeer Kowur was sold, to recover a balance of rent due from the farmers. The plaintiff in this case, a relation of Fukeer Kowur, claimed a share in the property sold ;

and instituted this suit, to recover the value of such his share, against the nominal farmers and their surety, and also against the petitioners, who, it was asserted, were the real farmers. The petitioners pleaded, that they had nothing whatever to say to the farm. The suit was dismissed by the sudder ameen; but, on appeal, the principal sudder ameen decreed against the petitioners, as well as the ostensible farmers.

‘The principal sudder ameen, however, seems to have taken it for granted, that the petitioners were the real farmers; for, as far as his decree goes, there was no enquiry as to that fact, nor does he assign any reason for decreeing against them. Special appeal admitted on the ground, that the decree of the principal sudder ameen cites no reasons for decreeing against the petitioners.’

We find that this decree has been given against Bana Kowur and Moratun Kowur, without sufficient proof of their liability: indeed the point of their liability has not been investigated. Ordered, that the decision be reversed, and the case returned to the principal sudder ameen, with orders to hold an enquiry on this point, and to decide the case again with due regard to the evidence adduced in connexion with it.

THE 19TH JULY 1847.

PRESENT:

R. H. RATTRAY and

A. DICK, Esqrs.,

JUDGES.

W. JACKSON, Esq.,

TEMPORARY JUDGE.

CASE No. 157 OF 1846.

Special Appeal from a decision passed by the Judge of Behar, the Hon'ble R. Forbes, September 30th 1844; affirming a decree passed by the Principal Sudder Ameen, Hedayet Ali Khan, July 31st 1844.

SHAH ABDOOL KURREEM, APPELLANT, (DEFENDANT,)

versus

KUNHYAH SAHOO AND MOHUN SAHOO, RESPONDENTS,
(PLAINTIFFS.)

Wuheels of Appellant—Ameer Ali and Abbas Ali.

Wuheel of Respondents—Lutfo Ruhman.

THIS suit was instituted by respondents on the 1st April 1843, to recover from appellant rupees 2,134-10-0, principal and interest,

in virtue of a bond dated 8th *Chey*t 1239 *Fuslee*, corresponding with the 14th March 1833.

The special appeal was admitted by Sir R. Barlow, on the 29th April 1846, who recorded the following certificate :

‘ The plaint states, that defendant borrowed 901 Sicca rupees from plaintiffs, on a farm of $\frac{1}{6}$ th of village Bhateeaon, at 35-12 *sudder jumma*, from 1237 to 1243 *Fuslee*. The farming deed specified, that, if the advance was not paid, before *Jhey*t 1243, the farm was to run on till the defendant discharged the debt. As the loan was not paid, plaintiffs continued in possession of the farm. The defendant, subsequently, borrowed a further sum of 1001 Sicca rupees on bond, bearing interest, also payable in *Jhey*t 1243 ; but failed to pay as agreed. This document has been lost ; intimidation of which, plaintiffs allege, was given to the magistrate. They sue for 2,134 Company’s rupees, principal and interest, on the bond dated 8th *Chey*t 1239 *Fuslee*. Defendant, in answer, admits that he had monetary transactions with plaintiffs ; and that they gave up a portion of their claim, and returned the bond to him, which he now holds. Plaintiffs have not given up the farming deed, and still keep possession of the land.

‘ The principal *sudder ameen* decreed the full amount claimed ; and the judge affirmed this order. An application for admission of special appeal was preferred, on the ground, that plaintiffs being in possession of the farm, they are not entitled to sue for the amount of the bond. The plaint is opposed to the conditions of the bond, as admitted by both parties. The plaintiffs are in possession of the farm ; and, under stipulation, cannot claim the amount of the loan so long as they continue to hold the farm.

‘ The decrees of the lower courts contravene the terms of the agreement entered into by the parties, by which they must be bound. Such decrees are opposed to practice : a special appeal is admitted to try this point.’

We are of opinion that the plaintiffs cannot claim payment of the money, the continuation of the farm being declared the alternative in lieu of payment. Ordered, that the suit be dismissed with costs ; and the decision of the principal *sudder ameen* reversed.

THE 19TH JULY 1847.

PRESENT :

R. H. RATTRAY and

A. DICK, ESQRS.,

JUDGES.

W. B. JACKSON, ESQ.,

TEMPORARY JUDGE.

CASE No. 232 OF 1846.

Special Appeal from a decision passed by the Additional Judge of Tirhoot, Mr. John French, December 12th 1844; reversing a decree passed by the 1st Principal Sudder Ameen, Niamut Ali Khan, January 28th 1843.

SHEO GHOLAM SAHOO, APPELLANT, (PLAINTIFF,)

versus

. MOHUMMUD KAZIM ALI KHAN, RESPONDENT,

(DEFENDANT.)

Wuheels of Appellant—C. B. Skinner and Abbas Ali.

Wuheel of Respondent—Buhadoor Ali.

THIS suit was instituted by appellant on the 12th April 1841, to recover from respondent the sum of Company's rupees 1,131-4-0; loss sustained by breach of contract for the supply of saltpetre on a specified date.

The special appeal was admitted by Mr. Charles Tucker, on the 25th August 1846, who recorded the following certificate :

‘This was a suit instituted to recover the amount anticipated profits, on the sale of 805 *maunds* of saltpetre, which the defendant (receiving 125 rupees as earnest money) had, by a special contract, bound himself to deliver to the plaintiff on or before a fixed day : but the defendant sold the saltpetre to a third party. The principal sudder ameen decreed for the plaintiff. On appeal, the additional judge admitted the facts to be as stated by the plaintiff; and, moreover, that the defendant was bound to provide the plaintiff with the specified quantity of saltpetre, and could not, under the deed of contract, sell it to another; but, because the deed did not contain any specific penalty for failure in the contract, he, the additional judge, reversed the decision of the principal sudder ameen, and dismissed the plaintiff's claim. This, I conceive to be contrary to practice, and the custom of the commercial community, and of the courts of justice.

‘If a man receives money in advance, and contracts to provide goods by a particular day, and at a specified price, equity demands

that the party advancing should recover from the contractor, failing to fulfil his engagement, an amount equal to what he would have gained on the whole transaction; that is by the re-sale of the goods stipulated for. On this point I admit the special appeal. The amount profit is of course open to discussion.'

The engagement on the part of the respondent, was, to supply a certain quantity of saltpetre, in Tirhoot, on the 9th of *Kartik* next ensuing after the engagement was entered into. In the event of the appellant not taking it on the day fixed, he (appellant) was to pay interest on the price till he should receive it. It was not taken on the day fixed; and the respondent, a day or two afterwards, sold it to a third party. Now, a distinct penalty having been attached to the neglect of appellant to take the saltpetre on the date agreed to, we are of opinion, that respondent was not warranted in disposing of it to another; inasmuch as appellant's right was not forfeited by the delay which had been specifically provided for: respondent has, therefore, we think, been guilty of a breach of contract, and is justly liable to the consequent damages now sued for. The amount claimed is not excessive, and is not objected to by respondent as being so.

We reverse the decision of the additional judge, and affirm that of the principal sudder ameen; with costs of both courts, and of this appeal, chargeable to respondent.

THE 20TH JULY 1847.

PRESENT :

J. HAWKINS, Esq.,

TEMPORARY JUDGE.

PETITION No. 207 OF 1847.

IN the matter of the petition of Radha Madhub Banoorjea, filed in this Court on 30th April 1846, praying for the admission of a special appeal from the decision of Mr. A. Sconce, judge of Backergunge, under date the 30th January 1846, amending that of Chunder Seekur Chowdhree, principal sudder ameen of Backergunge, under date the 22nd February 1844, in the case of Gopal Lal Thakur, plaintiff, *versus* the petitioner, defendant.

It is hereby certified that the said application is granted on the following grounds :

The plaintiff sued in this case as zemindar to establish his right to assess certain lands in the possession of the defendant, which he claimed to hold at a fixed rent. The principal sudder ameen gave judgment for the plaintiff, fixing the rents payable in future by the defendant, at a sum which he had ascertained by the deputation of an *ameen* to be according to the *pergunnah* rates.

The zillah judge, on appeal by the defendant, amended the order of the principal sudder ameen, and gave a partial decree for the plaintiff. The ground of his judgment was, that the plaintiff had purchased the zemindaree in fractional portions, at different periods, and that he was entitled to a judgment in his favor for that portion which had been in his possession for a period less than 12 years, but not for that portion of which he had been possessed for a period exceeding that term.

The defendant pleaded throughout, that he had never been served with the notice prescribed by Regulation 5, 1812, Sections 9 and 10.

Both parties apply for the admission of a special appeal from the judge's order.

The judge says in his decree, that it has been established, that the notice, prescribed by Sections 9 and 10, Regulation 5, 1812, had been served; but the defendant's plea is, that the service, which the judge says is proved, is not the service intended by the regulation, that it was neither served upon himself, nor at his residence. This ought to have been stated, in order to enable this Court to judge whether the law had been complied with or not.

Again, the judge has erred in applying the law of limitation to this case. The case of Mitunjoy Shah and others, v. Baboo Gopal Lal Thakur, (page 217, Sudder Dewanny Adawlut Reports, volume VII.) has settled this point.

I accordingly admit both appeals, and remand the case to be retried by the judge, with reference to the foregoing observations.

THE 20TH JULY 1847.

PRESENT:

J. HAWKINS, ESQ.,

TEMPORARY JUDGE.

PETITION No. 208 OF 1846.

IN the matter of the petition of Gopal Lal Thakur, filed in this Court on the 30th April 1846, praying for the admission of a special appeal from the decision of Mr. A. Sconce, judge of Backergunge, under date the 30th January 1846, amending that of Chunder Seekur Chowdhree, principal sudder ameen of Backergunge, under date the 22nd February 1844, in the case of the petitioner, plaintiff, *versus* Radha Madhub Banoorjea, defendant.

The grounds of the admission of this appeal and the order thereon, are stated in the order on the petition of Radha Madhub Banoorjea, No. 207 preceding.

. THE 20TH JULY 1847.

PRESENT:

W. JACKSON, ESQ.,

TEMPORARY JUDGE.

CASE No. 96 OF 1845.

*Regular Appeal from a decision passed by the Principal Sudder
Ameen of Cuttack, February 26th 1845.*

RAJAH SHAH UKBUR HOSEIN, APPELLANT, (PLAINTIFF,)

versus

COLLECTOR OF ZILLAH CUTTACK, RESPONDENT,
(DEFENDANT,) AND GOPEE NATH PUNDIT, AUCTION
PURCHASER.

Wukeel of Appellant—Mohummud Haniff.

*Wukeels of Respondent—Pursun Komar Thakur and Nilmoney
Bonerjee.*

THIS is a claim for reversal of the sale by auction of *Killah Durpun*, the property of plaintiff, for arrears of revenue: the suit is laid at rupees 24,695: the sale took place on the 27th May 1843.

On the 25th February 1845, the principal sudder ameen dismissed the claim.

The legality of the sale is contested under the provisions of Act 12, 1841; but it is also asserted, that that enactment does not relate to estates of the description of *Killah Durpun*, which is stated to be held by payment of a *peshcush* or tribute, not on payment of *malgozaree* or revenue. On a reference, however, to Section 33, Regulation 12, 1805, I find that *Killah Durpun* is there mentioned by name, as settled on a zemindaree tenure on a fixed *jumma* in perpetuity; and I have therefore no doubt, that it is subject to the provisions of Act 12, 1841. The plaintiff could still contest the legality of the sale; but it is objected by the defendant, that, by Section 25, Act 12, 1841, he cannot be heard, because he has not appealed to the commissioner of revenue, in the manner prescribed in Section 18 of that enactment.

It appears, that, on the 6th June 1843, a petition was received by the commissioner, by *dawk*, objecting to the sale, but it was signed only by a *mookhtar* for the Rajah; and not being authenticated, the petition was placed among the records, with an order, that, when the petitioner appeared, either in person or by agent, a proper order would be passed. No one appeared on the part of petitioner till after the expiration of the fifteen days allowed by law, when the commissioner refused to take up the matter. I am of opinion that the commissioner acted rightly. In Section 18, Act 12, 1841, it is enacted, that 'it shall be lawful for the commissioner to

receive an appeal against any sale made under this Act, if preferred to him on or before the 15th day from the date of sale, or if preferred to the collector, for transmission to the commissioner, on or before the 10th day from the day of sale, *and not otherwise.* I do not consider a petition sent by dawk to have been preferred in the manner intended by the Act; and, consequently, this Court has, under the provisions of Section 25, no authority to set aside the sale, whatever may be its defects. It is therefore useless to enter upon the other objections raised by the plaintiff. Ordered, that the decision of the principal sudder ameen be confirmed: costs against appellant.

THE 20TH JULY 1847.

PRESENT:

C. TUCKER and

A. DICK, ESQRS.,

JUDGES.

PETITION NO. 261 OF 1846.

IN the matter of the petition of David Mullik Fradoon Beglar, filed in this Court on the 28th May 1846, praying for the admission of a special appeal from the decision of the judge of Dacca, under date the 21st February 1846, affirming that of the principal sudder ameen of that district, under date the 5th September 1839, in the case of Khajah Kapriel Avietick Ter Estafanoos, plaintiff, *versus* the petitioner and others, defendants.

This case has already been before the Court, and the proceedings were remanded by Mr. A. Dick, to the judge of Dacca for further investigation on certain points, on the 14th May 1844.

The present application for a special appeal is founded on the allegation, that the orders of this Court have not been carried out on a most essential point, viz. whether the suit was not barred by the statute of limitations.

The plaintiff brought his action for recovery of possession of a brick house, and a garden surrounded by a brick wall, which he alleged had been sold to him in 1228 by Wanis Bagdessur; and of which the defendant, Beglar, had dispossessed him in the year 1239 B. S.

The defendant pleaded he had purchased the property, under a deed of *bye-bil-wuffa* in 1232 B. S., from Khatoon Jaun Bibi; who purchased it from Kalonas Arratoon, who purchased it from the son and widow of Wanis Bagdessur; that the money paid by him to Khatoon Jaun Bibi not having been repaid, he proceeded to foreclose under the provisions of Regulation 17 of 1806, and eventually sued for possession and obtained a decree; in execution

of which he was put in possession by the court's *nazir* in April 1835. He also pleaded the statute of limitations, in bar of the suit being entertained.

That point not having been investigated in the first decision, a special appeal was admitted on that ground; and the case coming before Mr. A. Dick, he, as before stated, remanded the proceedings for further investigation on certain points, and, amongst others, as to whether or no the suit was barred by the statute of limitations.

On this point the judge, in his decision 'now before the Court, merely states that the suit has been brought within time: but on what grounds he has come to this conclusion he does not state. Under these circumstances, it is impossible for this Court to judge of the correctness of the decision.

We accordingly admit the special appeal applied for; and, annulling the decision of the judge, remand the proceedings, in order, that the judge may enquire fully into the point of previous possession by the plaintiff, to show whether or no he was in possession at any period within twelve years of the institution of the suit; and that the judge, in recording his decision, may state fully and clearly the grounds on which it rests.

THE 21ST JULY 1847.

PRESENT :

A. DICK, ESQ.,
JUDGE.

W. JACKSON and
J. HAWKINS, ESQRS.,

TEMPORARY JUDGES.

CASES Nos. 223 AND 43 OF 1844.

Special Appeal from a decision passed by the Judge of Dacca, reversing that of the Principal Sudder Ameen.

BIBI MARIAM CACHIC MACKERTICH, APPELLANT,
(PLAINTIFF,)

versus

JOACHIM GREGORY AND OTHERS, RESPONDENTS,
(DEFENDANTS.)

Wukeel of Appellant—J. G. Waller.

Wukeel of Respondents—Pursun Komar Thakur.

THIS is a claim for the amount of a legacy, under the will of plaintiff's maternal grandfather, with interest on the same. The principal sudder ameen decreed the amount of principal without interest. Both parties appealed to the judge, who dismissed the plaintiff's claim altogether.

The case was admitted to special appeal, on the 3d August 1844, under the following certificate recorded by Mr. Reid :—

‘ The right of the plaintiff to receive the legacy under the will is not denied ; and, unless it be proved that the legacy has been already paid, or that the assets of the estate are already absorbed, and nothing remains from which payment can be made (neither of which contingencies are proved in the case) the plaintiff was entitled to a decree. The judge’s decision appears to me contrary to justice and the practice of the courts. I admit the special appeal to try the above points.’

The validity of the will is not contested ; and we find the legacy claimed forms part of the will. The defendants are the heirs of the trustees, who were also residuary legatees ; and the residuary property is, by the 6th clause of the will, left to them distinctly, after payment of the legacies previously mentioned, of which the legacy claimed is one : there can be no doubt of the justice of the claim. The defendants raise an objection on the ground of lapse of time, but it has not been sustained, nor is this point mentioned in the certificate of admission of special appeal.

Ordered, that the decision of the judge be reversed, and a decree given in favor of plaintiff for the amount of her legacy, 1,500 rupees, with interest from the date of action to this date ; and interest on the whole amount from this date till date of payment. Costs of all the courts against the defendant. This decision disposes of both the appeal cases.

THE 24TH JULY 1847.

PRESENT :

C. TUCKER, ESQ., and
SIR R. BARLOW, BART.,

JUDGES.

J. HAWKINS, ESQ.,

TEMPORARY JUDGE.

CASE No. 346 OF 1845.

Special Appeal from a decision passed by the Principal Assistant to the Governor General’s Agent, South West Frontier, June 28th 1844 ; reversing a decree passed by the Moonsiff of Lohurdugga, March 24th 1844.

GOBIND DAS GOSAIN, APPELLANT, (PLAINTIFF,)

versus

NURKOO SAHOO, RESPONDENT, (DEFENDANT.)

Wuheels of Appellant—Luchmee Purshad and Dukhinarunjun Moorherjee.

Respondent—absent.

THIS case was admitted to special appeal, on the 17th September 1845, under the following certificate recorded by Sir R. Barlow :—

‘Plaintiff sued defendant for Company’s rupees 254, a money debt, in the moonsiff’s court. Defendant acknowledged the debt, but pleaded payment of the amount, save 12 rupees, 12 *annas*. The moonsiff decreed the full amount claimed. The principal assistant reversed the moonsiff’s decision.

‘As it appears, that the appeal to the principal assistant was preferred after the lapse of 1 month and 7 days from the date of the moonsiff’s decree, in violation of Clause 3, Section 2, Regulation 7 of 1832; and as the principal assistant has, by reversing the moonsiff’s decision altogether, disallowed the sum of 12 rupees, 12 *annas*, which the defendant in his answer acknowledged to be due by him, a special appeal is admitted to try the legality of the principal assistant’s order of the 28th June 1844.’

The principal assistant has assigned no reason for admitting the appeal from the moonsiff, after the prescribed period, as was requisite. He has also overlooked the fact, that the defendant admitted the plaintiff’s claim to the extent of 12 rupees, 12 *annas*. The Court therefore, reversing the decision of the principal assistant, direct that the case be returned to him; and he will, on consideration of what is above indicated, re-try the case, and dispose of it on its merits.

THE 24TH JULY 1847.

PRESENT :

C. TUCKER, ESQ., and

SIR R. BARLOW, BART.,

JUDGES.

J. F. HAWKINS, ESQ.,

TEMPORARY JUDGE.

CASE No. 15 OF 1846.

Special Appeal from a decision passed by Edward Deedes, Esq., Additional Judge of the 24-Pergunnahs, August 12th 1844; reversing a decree passed by Hurchunder Ghose, Additional Principal Sudder Ameen, August 11th 1843.

TARAPURSHAD RAE CHOWDHREE, APPELLANT,
(PLAINTIFF,)

versus

DOORGAPURSHAD RAE CHOWDHREE, RESPONDENT,
(DEFENDANT.)

Wuheels of Appellant—Ram Pran Rae and Bungsee Buddun Mitr.

Wuheels of Respondent—Rajnarain Dutt and J. G. Waller.

THIS case was admitted to special appeal, on the 13th December 1845, under the following certificate recorded by Mr. J. F. M. Reid :—

'On the 7th April 1821, Doorga Purshad Raeë sued Shama Purshad Nundee, in the provincial court of Calcutta, to recover 11,512 rupees principal, and a like sum as interest=23,024 rupees; and, on the 27th July 1829, got a decree for the sum claimed without interest. While the suit was pending before the provincial court, Tara Purshad claimed a 6 *annas*' interest in the debt, but his claim was rejected. Shama Purshad appealing to this Court, Doorga Purshad settled the case by agreeing to receive 23,024 rupees by instalments. On the 16th March 1835, Tara Purshad brought a suit in the zillah court of Midnapore, to recover from Doorga Purshad and Shama Purshad 14,461 rupees, being 6 *annas* of the sum decreed by the provincial court with interest, *intimating his intention of suing afterwards for his share of the interest, which accrued while the suit was pending in the provincial court, viz. 8 years, 3 months, and 23 days.* The judge of Midnapore, rejecting the claim to interest from the date of the provincial court's decree to the date of the institution of the suit, decreed the sum of 8,000 rupees. Tara Purshad appealed to this Court against that portion of the decision which disallowed interest: Doorga Purshad against that portion which declared him liable to the payment of 8,000 rupees. The appeal of the latter was dismissed; and of the former decreed on the 15th April 1841, by Mr. D. C. Smyth, who awarded to Tara Purshad both principal and interest.

'On the 3d December 1842, Tara Purshad instituted a suit, out of which the present application arose, to recover from Doorga Purshad 4,593-12-19-0, being 6 *annas*' of the interest which accrued while the first suit was pending before the provincial court, with interest from the date of plaint to the day of payment in the zillah of the 24-Pergunnahs, in the jurisdiction of which both parties reside. The defendant pleaded the rule of limitations. The additional principal sudder ameen rejected the claim, on the 11th August 1843, chiefly on the ground of the claim being barred by the rule of limitations. The additional judge, on appeal, reversed this decision, and decreed both principal and interest from the date of plaint to that of payment.

'The petitioner prays for a special appeal:—*first*, because the plaintiff ought not to have left this claim for a separate suit, when he sued for his share of the principal; *secondly*, because the claim was barred by the rule of limitations; *thirdly*, because he did not include Shama Purshad Nundee among the defendants.

'The appeal is admissible to try the two first points; and the usual conditional order is accordingly passed.'

MESSRS. TUCKER AND BARLOW.—We are of opinion, that the two grounds, on which this special appeal has been admitted, do not sustain the appeal, and we are not at liberty to entertain or enquire into any other plea. The suit is brought against Doorga Purshad for injury done to the plaintiff by Doorga Purshad, in adjusting a case

pending in the Sudder Dewanny Adawlut between him and Shama Purshad Nundee, which adjustment bears date 16th May 1831. This suit was brought on the 3d September 1842. Now, whether the claim was good or bad, it could not have been thrown out under the statute of limitations. On the 1st point we find the suit was instituted prior to 11th January 1839, so that the Circular Order of that date cannot be applied to it. We therefore dismiss the appeal, with costs against the appellant.

MR. HAWKINS.—Tara Purshad Raee claimed a 6 *annas*' share in the debt due by Shama Purshad Nundee, while the suit was pending before the provincial court, on the ground of an adjustment between himself and his brother Dorga Purshad Raee. He was referred to a regular suit, and might have brought it at once; and as he did not do so, I cannot admit, as a new cause of action, a subsequent transaction, which, but for his omission to sue, would never have occurred. The permission to sue was given in the year 1829, the same year in which the decree of the provincial court was passed. This suit is for interest during the period that that suit was pending. I consider the suit is barred by the rule of limitation, and would reverse the decrees of the lower courts.

THE 24TH JULY 1847.

PRESENT :

C. TUCKER and
A. DICK, ESQRS.,
JUDGES.

J. A. F. HAWKINS, ESQ.,
TEMPORARY JUDGE.

CASES NOS. 203 AND 204 OF 1843.

*Regular Appeal from a decision of the Judge of Rajshahye,
Mr. G. C. Cheape.*

BHUWANEE CHURN MITR, APPELLANT, (DEFENDANT),
versus

JYKISHEN MITR, THEN GOPEE MOHUN BOSE, AND GO-
LUK CHUNDER SINGH, RESPONDENTS, (PLAINTIFFS.)

Wukeel of Appellant—Raj Narain.

*Wukeels of Respondents—J. W. Colville, Pursun Komar Thakur,
and Gholam Sufdur.*

THIS is an action brought for possession of an estate comprised within the district of Rajshahye, but sold in Calcutta by the act of the mortgagee, in order to repay himself the amount of a loan made to the mortgaging proprietor, the defendant in the suit. The mortgagee had obtained judgment in the Supreme Court on the mortgage bond; and it was subsequent, upon that decree, that the pro-

perty was sold, agreeably to the stipulations of a special condition, which empowered the mortgagee to proceed to such sale; and purchased by the present plaintiff.

The zillah judge decided the case solely upon English law, and gave judgment in favor of the plaintiff. From this judgment an appeal was preferred to the Sudder Dewanny Adawlut; and the Court, on the 3d June 1846, (present: Messrs. Tucker, Reid and Dick) affirmed the decree of the lower court, on the ground that 'the Supreme Court would not admit a suit for ejectment, as the monthly tenants of the property in question were not amenable to its jurisdiction; and it is only on an action for ejectment, that they would entertain a suit for right and title.'

On the 17th June 1847, Messrs. Tucker and Dick, two of the deciding judges, (Mr. Reid having left the Court) admitted a review of judgment, under an order to the following effect:—

'From what has been advanced by Mr. Prinsep, we are led to conclude that the plaintiff in this case had his remedy in the Supreme Court. At any rate, the point is very doubtful; and, after the hearing of such very different opinions, from the two eminent counsel who have argued it before us, nothing short of a rejection of plaintiff's suit by the Supreme Court itself can be satisfactory.

'It has been argued now, that it is immaterial whether the plaintiff had or had not his remedy in the Supreme Court, since he could elect whether he would sue there or in the Company's Courts.

'This we cannot admit. Had the contract been entered into in conformity with English law, and also our law, then the argument would have been valid. But the contract was made and carried out according to English law, and the practice and usages of the Queen's Supreme Court only; and the parties bound themselves, especially the defendant, to have all differences adjudicated in the Supreme Court. We hold, therefore, we ought not to take upon ourselves, without absolute necessity, to decide according to laws and practices with which we are unavoidably unacquainted.

'It has been further urged, that we are required to give effect to a mere *bonâ fide* sale. We hold, however, that the power to sell was part and parcel of a mortgage transaction, unknown to our courts; and, if not actually a contravention of our laws of mortgage, so great a deviation from, and innovation on them, that, without necessity, it should not be recognized. However suitable to England the recognition of such powers of private sales may be, experience has shown that they cannot be allowed in this country. The legislature was obliged to interpose and forbid them, and enact other provisions, as detailed in Regulation 8, 1819. Lastly, our mortgage laws were enacted expressly to prevent improvident transfers; and therefore are opposed to such sales, which can never realize any sum approaching a fair price, as the purchaser must know that he has a law-suit tacked to his purchase.

‘The Court, therefore, admit the review to try the question, whether the Court can recognize, and adjudge real property on a transaction entered into, and deeds drawn out, with solemnities unknown to the laws which it administers.’

MESSRS. TUCKER AND HAWKINS.—With reference to the ground upon which the former judgment of this Court proceeded, the Court are now fully satisfied that the plaintiff should at least have first sought his remedy in the Supreme Court. The transaction out of which the action arises, occurred within the limits of the local jurisdiction of the Supreme Court, and under sanction of the law, as administered by that Court: the defendant is, by inhabitation, subject to the Supreme Court; and, being engaged in the collection of the rents of the estate, he must be in, what the English law considers, *actual* possession of at least some portion of the estate, though it be nothing more than the *kucherry-baree* or zemindaree office, and the ground upon which it stands. Admitting that the tenants are in *actual* possession of the rest of the estate, the defendant must be in *actual* possession of that which is an emblem of possession of the entire estate. It would thus appear, that the remedy should at least have been sought in the Supreme Court. We have not a single instance of a suit of this kind having been brought into our courts; though we have many suits brought either upon decrees of the Supreme Court, or upon acts done under the process of that Court: and to this practice, it is advisable, as far as possible, to adhere.

But we have jurisdiction over the property; and possessing therefore a concurrent jurisdiction in the case, the plaintiff is at liberty to seek his remedy in our courts, instead of in the Supreme Court; but he must do it upon the understanding that his title will be tested, not by English, but by the *mofussil* law: and here the zillah judge has fallen into error, in deciding the case according to English law. The sale did not take place under any process of the Supreme Court, but by an act of the mortgagee, acting as trustee for the sale of the property. The transaction therefore was altogether of a private nature, in virtue of a stipulation between the mortgager and the mortgagee: and the question arises whether the laws, under which we act, are to be held in abeyance and suspension, in regard to private transactions, effected according to the English law, within the limits of the jurisdiction of the Supreme Court; or, to put it in another form, with reference to its more immediate bearing upon the present case, whether the creation of titles to immovable property, situated in the *mofussil*, is to be governed, in the absence of any express provision to the contrary, by the law of the place of contract, or by that of the place in which the property is situated. Such a sale as that, which we are now considering, may be legal according to English law; but the question, as it appears to us, is not this,

but, whether it is legal, according to *mofussil* law. If parties bring actions into our courts upon contracts effected according to the law of England, they must do it upon the understanding that such transactions will be judged and dealt with according to the rules of our regulation law. This is in accordance with the principle laid down by Burge, Story, and other writers, that 'the creation and modification, as well as the nature and extent of the estates and interests acquired in immovable property, and generally the form and manner of the transfer are governed by the law of the place in which the property is situated:—and, further, that 'the constitution or acquisition of the *jus hypothec* in immovable property, and the rights and obligations of the mortgager and mortgagee are also wholly dependent on the *lex loci rei sitæ*:—and, again, 'the general principle of the common law is, that the laws of the place, where such property is situate, exclusively govern, in respect to the rights of the parties, the modes of transfer, and the solemnities which should accompany them. The title, therefore, to real property can be acquired, passed, and lost only according to the *lex rei sitæ*:—' So far as certain characters are impressed upon immovable property by the law of the country where it is situate, these characters remain indelible in that country, whatever dispositions the laws of other countries, or the acts of private persons may ordain otherwise or contrary thereto. Nor would it be without great confusion and prejudice to the country, where the immovable property is situate, that its own laws respecting it should be changed by such dispositions.'—' It is conceived to be indisputable, that the law of the *situs* must be adopted in all questions respecting the power of alienating immovable property, or the restrictions under which that power may be exercised.'—' It would seem clear also, according to the common law, that no conveyance or transfer of land can be made, either testamentary or *inter vivos*, except according to the formalities prescribed by the local law.'—' The common law has wisely adhered to the doctrine, that the title to real property can pass only in the manner, and by the forms, and to the extent allowed by the local law. It has thus cut off innumerable disputes, and given simplicity, as well as uniformity, to its operations.'—' Without going further into an examination of the opinions of foreign jurists upon this subject, it is sufficiently obvious, what difficulties they are compelled to encounter at almost every step, in order to carry into effect their favorite system of the division of laws into real and personal. The common law has avoided all these difficulties by a simple and uniform test. It declares, that the law of the *situs* shall exclusively govern in regard to all rights, interests and titles in, and to immovable property. Of course, it cuts down all attempts to introduce all foreign laws, whether they respect persons or things, or give or withhold the

capacity to acquire or dispose of immovable property.' These quotations from Burge and Story, clearly lay down the principle upon which the Court is to proceed in the decision of this case, for it is a principle of general application. And the question is not whether the stipulation of sale is legal according to English law; but whether it is legal according to *mofussil* law: and we must treat it just the same as we would have treated a similar condition, occurring in a transaction effected between parties residing and contracting in the *mofussil*, in regard to property situated therein.

That the condition was the act of the mortgager himself, is, according to the principle recognized in the foregoing quotations, immaterial to the point; and the plaintiff's counsel, in arguing their client's case, did not, in the most remote degree, rest upon this ground.

It is not contended by the plaintiff's counsel, that the condition of sale by a mortgagee is known to our regulation code, or to the practice of our courts. It may safely be affirmed that no such condition is to be found in any document produced in the Company's courts, since the Code of 1793 came into operation, between parties contracting in the *mofussil*. Such a clause is in favor of the lender, who, in this country, can generally make his own terms with the borrower. If then respect be had to the universal impression throughout the country, and to the uniform practice of our courts, the presumption must be against the validity of such a stipulation.

But (it is argued) the practice was not known to the English law, when it was first admitted and recognized by the courts. This argument may at first sight appear to carry weight with it; but it is not by any means conclusive. We must look to the recognition of such an agreement by the courts in connection with the general tendency of the laws which they administer. The tendency of one system of laws may be to give every facility to the lender; and then such a condition would be admissible as increasing those facilities, and promoting the very object of the law. The tendency of another code may be to give every protection to the borrower, and then the same condition might be altogether inadmissible as interfering with that protection. Such a condition might be perfectly consistent with the laws of a great commercial country affording every facility to the capitalist lender; but, at the same time, be quite inconsistent with the laws of a country deriving the great bulk of its revenue from the land, and as a recompense for the stringency of the rules under which it is compelled to collect its revenue, in order to carry on the Government, (sale of the estate being the penalty of default) affording every possible protection, in his private transactions, to the land-holding borrower.

The first provision of the regulations to which we think it necessary to refer, is, Section 9, Regulation 1, 1793. It is to the following effect:—' That no doubt may be entertained, whether proprietors

of land are entitled, under the existing regulations, to dispose of their estates without the previous sanction of Government, the Governor General in Council notifies to the zemindars, independent *talookdars*, and other actual proprietors of land, that they are privileged to transfer to whomsoever they may think proper, by sale, gift, or otherwise, their proprietary rights, in the whole, or any portion, of their respective estates, without applying to Government for its sanction to the transfer : and that all such transfers will be held valid, provided that they be conformable to the Mahomedan or the Hindoo laws, (according as the religious persuasions of the parties to such transaction, may render the validity of it determinable by the former or the latter Code) and that they be not repugnant to any regulations now in force which have been passed by the British administrations, or to any regulations that they may hereafter enact.'

We will take this enactment in its most extended signification, and admit not only that a transfer by the proprietor himself, but that every condition also, by which such a transfer can be made, is admissible if conformable to the Mahomedan or Hindoo laws, as the case may be, and not repugnant to any of the regulations of Government. The pleader on the part of the plaintiff has cited various passages from works of Hindoo and Mahomedan law, to shew that the condition of sale by the mortgagee, of the mortgager's property, is not unknown to those laws : but the appeal to those Codes is useless and irrelevant, if the condition or contract is repugnant to the regulations.

The regulations will be searched in vain for any *express* enactment prohibiting such a contract. As we have already remarked, no such suit has ever been brought into our courts, and no such practice exists in regard to the transfer of real property in the *mofussil*. The legislature, of course, did not make enactments to prohibit that which was not known to exist. Had it existed, it would certainly have been known to the legislature ; for the preamble of Regulation 2, 1793, recites ' that landholders were not allowed to transfer such rights as they did possess, or raise money upon the credit of their tenures, without the previous sanction of Government ;' and had it been known to exist, it is clear from other enactments that it would have formed the subject of legislation.

Considerable stress has been laid by the plaintiff's counsel upon Section 5, Regulation 1, 1798, which is to the following effect :— ' Nothing in this regulation being intended to alter the terms of contract settled between the parties in the transactions to which it refers, (illegal interest excepted) the several provisions in it are to be construed accordingly ; and any question of right between the parties is to be regularly brought before and determined by the courts of civil justice.' Regulation 1 of 1798, is entitled—' a regu-

lation to prevent fraud and injustice in conditional sales of land under deeds of *bye-bil-wuffa*, or other deeds of the same nature.' The principles of the regulation (to which we shall have occasion again to allude) are laid down in the preamble: its provisions in the enacting sections which follow. Its *principles* may help to guide the Court in coming to a right conclusion in regard to a contract unknown to our laws and practice: its *provisions* must refer to the particular contracts of which it speaks. Its principles are of general, its provisions of special, application. The latter could not possibly be intended to include terms and conditions non-existent in practice, and unknown to the legislature. Nothing can be more decisive on this point than the terms of the section above cited, and which recite that 'any question of right between the parties'—that is, the mortgager and mortgagee, or their representatives—'is to be regularly brought before, and determined by, the courts of justice.' This provision cannot possibly be so extended as to include the creation of a right in favor of a third party, not a party to the original contract.

This section does not in any way interfere with the general principle recognized by Section 9, Regulation 1, 1793. The question then, is, whether the condition under which the disputed property was sold is repugnant, or not, to any regulations of the British Government of India.

The repugnancy cannot, in this case, consist in an actual contravention of an express enactment, for the contract itself is unknown to the law. But as no specific rule exists, and acting according to justice, equity and good conscience (Section 21, Regulation 3, 1793), following the regulation-laws, enacted for the government of transfers of immovable property, is the contract repugnant to the spirit of those laws, and to the principles which they recognize and uphold?

We are of opinion, that it is repugnant to the principles of the regulations enacted by the British Government for regulating the transfer of immovable property in satisfaction of debts in general; and to those for regulating the transfer of immovable property in satisfaction of debts on mortgage in particular.

And, first, as to its repugnancy to the principles of the regulations enacted for the regulation of transfers of immovable property in satisfaction of debts in general.

The regulations of Government authorise the transfer of real property in satisfaction of simple debts—in satisfaction of debts on mortgage or security of landed property—in satisfaction of arrears of rent on dependent tenures under Clause 7, Section 15, Regulation 7, 1799, and Act 8, 1835—and in satisfaction of arrears on *putnee* tenures under Regulation 8, 1819. In the first and last two cases, the transfer is effected by public sale. In some cases of

mortgage the same course is adopted, in others by foreclosure ; *but in no one of these instances can the creditor effect a transfer of his debtor's property, without the intervention of a public authority to conduct the sale, or to complete the transfer.*

The preamble of Regulation 8, 1819, is very much to the point : it was cited in the order of the Court admitting the review of judgment, and the plaintiff's pleader came prepared to argue the point with reference to it ; but we looked in vain for any satisfactory reason for the inapplicability of its statements to the present case. It is not sufficient to say that that regulation had another object in view. Unquestionably it had. But the point for consideration is, the manner in which Government dealt with the practice of zemindars selling their defaulter's tenures. Among other things, the preamble says ' by the terms also of the engagements interchanged, it is, amongst other stipulations provided, that in case of an arrear occurring, the tenure may be brought to sale by the *zemindar*, and if the sale do not yield a sufficient amount to make good the balance of rent at the time due, the remaining property of the defaulter shall be further answerable for the demand. These tenures have usually been denominated *putnee talooks* ; and it has been a common practice of the holders of them to under-let on precisely similar terms to other persons, who, on taking such leases, went by the name of *dur-putnee talookdars* : these again, sometimes, similarly under-let to *seputneedars*, and the conditions of all the title deeds vary in nothing material from the original engagements executed by the first holder. In these engagements however, it is not stipulated whether the sale, thus reserved to himself by the grantor is for his own benefit, or for that of the tenant ; that is, whether in case the proceeds of sale should exceed the zemindar's demand of rent, the tenant would be entitled to such excess : neither is the manner of sale specified ; nor do the usages of the country, nor the regulations of Government, afford any distinct rules, by the application of which to the specific cases, the defects above alluded to could be supplied, or the points of doubt and difficulty, involved in the omission, be brought to determination in a consistent and uniform manner. The tenures in question have extended through several *zillahs* of Bengal, and the mischiefs which have arisen, from the want of a consistent rule of action for the guidance of the courts of civil judicature in regard to them, have been productive of such confusion as to demand the interference of the legislature. It has, accordingly, been deemed necessary to regulate and define the nature of the property given and acquired on the creation of a *putnee talook* as above described ; also to declare the legality of the practice of under-letting in the manner in which it has been exercised by *putneedars* and others, establishing, at the same time, such provisions as have appeared calculated to protect the under-lessee from any collusion of his imme-

diate superiors with the *zemindar*, or other, for his ruin ; as well as to secure the just rights of the *zemindar* on the sale of any tenure under the stipulations of the original engagements entered into with him. It has further been deemed indispensable to fix the process by which the said tenures are to be brought to sale, 'and the form and manner of conducting such sales.' The mode of conducting such sales is then laid down in Section 9 of the regulation, since modified by Section 16, Regulation 7, 1832, which prescribes, that all such sales shall be made by the collector of land revenue. Here we have the only instance in which an auction sale of interests in land, by other than public officers, has been known to exist since the Code of 1793 came into operation. Such was the confusion caused by the want of a specification of the manner of sale, and by the absence of any known rules to regulate the sales, that the legislature deemed it indispensable to interfere and supply the defect. The practice of sale by the lessors of *putnee* tenures, was ascertained to exist to a great extent in the country, and the legislature stepped in to put a stop to it. The Court is now asked to sanction a sale by a mortgagee made under the sanction of a foreign law, and unknown to the regulation law, and to upwards of half a century's experience of the country governed by it ; and to create in the case of mortgages the very confusion which Regulation 8, 1819, was enacted to remedy in the case of *putnee talooks*. The regulation of a practice known to exist, is a very different thing from the creation of a practice previously non-existent and unknown : the latter involving the very evils and the same confusion which the legislature interfered to correct in the former. We hold it to be clearly established then, that the regulations of Government do not sanction in any case the transfer of immovable property, in satisfaction of a debt, without the intervention of a public officer, except such transfer be by the direct and immediate act of the proprietor himself ; and that such a contract, as that under which the plaintiff in the present action became a purchaser, is repugnant to the regulations.

We now come to the second point, that the contract is repugnant to the principles of the regulations enacted by the British Government for regulating the transfer of real property in satisfaction of debts, on mortgage in particular.

There are three species of mortgage known to our regulations, and the practice of our courts :—*first*, the simple usufructuary mortgage, in which the right of redemption is reserved to the mortgager at any time on liquidation of the debt, either from the usufruct, or by a cash payment, or deposit in court—*Secondly*, cases in which the land is given as collateral security for the debt, without enjoyment of the usufruct by the mortgagee, or any condition of the absolute transfer of the property pledged to the mortgagee in case

of non-payment. In such cases, the mortgagee brings his action for the recovery of the loan; and, in execution of the decree, proceeds, through the Court, against the property upon which he has a prior lien—*Thirdly*, the *bye-bil-wuffa*, or *kut-kubaleh*, mortgage or conditional sale, in which, if the debt be not paid as stipulated, the mortgagee proceeds, according to prescribed rules, to convert the conditional into an absolute sale. In the first case, the property of the mortgager cannot be transferred. In the last two cases, the transfer can only be effected by the immediate act of a court of justice.

We allude again to Regulation 1, 1798, only to point out how the progressive experience of the courts tended to show that the borrower on the security of landed property, was at the mercy of the lender; and that the Government interfered to protect the borrower from denials of tender, and evasions of receipt, of the money borrowed, and other abuses in cases of conditional sales. But this was not considered sufficient: and in eight years another provision (Regulation 17, 1806, Sections 7 and 8,) was enacted for the further protection of the borrower. It is true, that this provision refers to conditional sales, in which the sale, under certain rules, is to be made absolute to the mortgagee, not to cases in which the property is to be ultimately sold by auction in satisfaction of the debt. We refer not however to the immediate *result* of the provision, but to the *object* for which it was enacted. The preamble says it was enacted for the purpose of preventing improvident and injurious transfers of landed property, at an inadequate price—an object which, daily experience shows, can never be attained in this country except by protecting such transfers to the utmost, as to the mode of transfer, the freedom from incumbrance of the titles conferred, and security to succession of the property conveyed by them.

It is urged for the plaintiff that the public sale of the mortgager's property cannot be a disadvantageous mode of proceeding towards the latter; that his property is sold to the highest bidder, and that, if a surplus remains, it belongs to himself. We have not to deal with abstract theories or bare possibilities; but with what experience and the principles of the regulations furnish us, as our guides in the determination of a novel and unprecedented case. In a case of execution of a decree of court, the proclamation of sale is an invitation to others interested to come and state their claims, if no claim is preferred, the title of the purchaser may generally be considered a pretty fair one. If claims are preferred, they are summarily investigated, and should they appear fraudulent, are rejected: and in this case too, the purchaser may generally be considered in a good position, as few are willing to incur the expense of a regular action on grounds already declared by a court of justice to be

primâ facie fraudulent. And yet, with all the formalities and securities of a transfer of real property, by a sale made by a court of justice, how frequent are the complaints that the property has been sold at an inadequate price: how much more frequent would they be, had not this Court held that inadequacy of price, at a regularly conducted sale, forms no ground for its reversal. If such be the case in such sales, the evils to be apprehended from permitting private individuals to sell their debtor's property, in satisfaction of their claims, must be tenfold. But few purchasers at a fair price will be found, when, in all probability, a law-suit (as the order granting the review expresses it) will be tacked to the purchase. The object of the regulation is to prevent improvident and injurious transfers of landed property at an inadequate price: the result of such a practice, as that which the contract before us involves, would be to render them universal. This Court has only to declare such a condition legal, and in the course of a short time not a mortgage bond would be without it. The mortgagee would then sell his debtor's property to suit his own time; and in such manner, and with such publicity and formalities, as he thought proper. Fraud, it is to be feared, would frequently accompany the transfers, and the property fall into the hands of the mortgagee, or some of his connections (even as in this case it is alleged, the purchaser is the son-in-law of the mortgagee) at an inadequate price; leaving the lender at liberty still to pursue the borrower for the balance that may remain after the sale. The tendency of Regulation 1, 1798, and Regulation 17, 1806, Sections 7 and 8, is to protect the mortgager, and to secure and preserve to him his right and power of redemption to the very last; and we cannot but consider as repugnant to them, a contract by which their spirit may be evaded, their object defeated, and the remedy they provide for the evils they specify utterly annihilated.

Had the plaintiff first sought his remedy in the Supreme Court, and come into our courts upon a decree of that Court, in consequence of difficulties in obtaining possession, which the Supreme Court could not reach; or had he come upon a title derived from an act, done under the process of that Court, he would then have stood in quite a different position, as he would have come into the *mofussil* courts under totally different circumstances. Our courts would not then have had any thing to say to the nature of the transaction. Instead of acting upon their own laws, governing private transactions, they would have acted on the more general rule, which requires them to respect the judgments and proceedings of a court of competent jurisdiction and authority. We are not prepared to say that this is quite in conformity to the principle, which ordinarily regulates the reception of foreign judgments by courts of justice; but the practice has been adopted by this Court after mature deli-

beration and consultation with the proper authorities; and any departure from it, considering the relative position of the Supreme Court and the Company's courts, is to be deprecated and avoided: and should the Supreme Court, in such cases as this, apply to the creation of titles to immovable property in the *mofussil*, the law of the *locus contractus*, and not that of the *locus rei sitæ*, this Court will take it for granted, that it does so in the exercise of a power conferred upon it.

We do not consider it necessary to enter into the question of whether the plaintiff-purchaser can take the ordinary measures, prescribed by our regulations, for rendering a conditional sale absolute: that involves the prior question, of whether, under the nature of the contract generally, the mortgagee could have done so. Our laws sanction the transfer by a mortgagee of his own rights and interests in a mortgage, without prejudice to the rights of the mortgager; but they do not permit him to create a title, in favor of a third party, distinct from his own. He may put another person in his own position; but he can do nothing more.

After a most attentive consideration of the case, we can come to no other conclusion than that the purchase, upon which the plaintiff sues, having been made at an auction sale, effected by a mortgagee acting as trustee for the sale of the property, cannot be recognized by this Court. We therefore reverse the decree of the zillah court and the former decree of this Court, and dismiss the plaint. With reference to the nature and circumstances of the case, the parties will be charged with their own costs in the zillah and Sudder Courts.

MR. DICK.—The claim in this suit is founded on a mortgage transaction, conducted in conformity with English law. Our courts are bound, under Section 13, Regulation 41, 1793, to be guided in our proceedings and decisions by regulation law, as therein prescribed, and by no other.

Moreover, the concurrent opinion of nearly all jurists of every nation has declared, that, in order to transfer the *dominium* of immovable property, its alienation must be made in the manner prescribed by the law of the country in which it is situated. And there is no consideration by which the supremacy of the *lex loci rei sitæ* in deciding on the validity of the transfer of the *dominium* is maintained, which does not equally maintain it in deciding on the validity of the *Hypothec* [Burge, volume III, page 389.]

In this case, the Supreme Court has concurrent jurisdiction with this Court, or it has not. If they have, then the transactions on which the claim is founded, having been conducted in conformity with the solemnities of the law that Court administers, the suit should have been instituted therein; for this simple and self evident reason, because the matter could have been there best adjudicated. If the Supreme Court have not jurisdiction, then the case must be decided under the law we administer, the *lex loci rei sitæ*.

It has been strenuously argued by the Advocate General, that there is nothing in the transaction, on which the suit is founded, contrary to our law. That our mortgage laws are, in fact, in spirit and principle, the very same as those of England: that no courts could be more careful and jealous in upholding the right of redemption, than the English Courts of Equity; yet they have declared the validity of such sales, effected in virtue of power to sell granted to a mortgagee, because the surplus proceeds of the sale revert to the mortgager, after satisfying the mortgage bond: and that, in truth, such powers and sale are equally beneficial to the mortgager as to the mortgagee, since he gets the full value of his property.

The Government pleader, Parsun Komar, has also zealously urged that there is nothing in the transaction repugnant to the regulations under which we administer; and, further, has shown that such powers of sale were known to both the Hindoo and Mahomedan laws long before they were introduced into the English system of mortgage transactions, and recognized by the English Courts of Equity.

There can be no doubt that the transaction in question, viz: the sale of the property, together with the power to sell, is part and parcel of a mortgage transaction: and that the power was conditional, dependent on the money lent on mortgage being repaid on a specified day. A conditional sale to the mortgagee, known to our regulation law, is exactly similar in respect of the condition: and if we may judge from the amount realized by the sale in this case, in reality more beneficial than such sales to the mortgager, since the amount realized did not equal the amount due, and for the balance he was still liable. All depends however, in both cases, on the payment, or tender of payment, within the time fixed. This our legislature found to be a most important point, open to much litigation, and difficult of ascertainment. They therefore enacted Regulation 1, 1798. Regulation 17, 1806, was subsequently passed, expressly to prevent improvident and injurious transfers of landed property, by forfeiture of mortgages accompanied with a conditional sale; and an equitable provision was made for allowing a right of redemption, within one year after notice issued out of court by mortgagee. When it is considered, that such powers to sell as that in question, leave it perfectly discretionary with the mortgagee to select his own time, and to sell to whomsoever he pleases, little doubt can remain, that the transfers would, in this country, usually become, in the language of our regulation, 'improvident and injurious:' and consequently must be deemed, as coming within the intent of our legislature.

Thus then the principle of our laws of mortgage is clearly, that no conditional sale of mortgaged estates shall be absolute and unredeemable, until the expiration of one year after issue of notice to the mortgager to redeem, through the instrumentality of a court of justice.

In proof of the validity of such sales as that in suit, under the English law, three cases have been cited as conclusive—[*Croft v. Powell*—*Clay v. Sharpe*, and *Corder v. Morgan*.] All three, no doubt, settle incontestably the recognition of the validity of such sales: not so, however, the *nature* of the transfer conveyed by them, whether absolute or redeemable. In the two latter cases, this point was not so much as mooted. In both, the only point established was, that the participation of the mortgager in the sale was not requisite. In *Croft v. Powell* however, the *nature* of the transfer was essentially the subject matter of the suit; and the decree given was that the transfer was redeemable: and the decision was affirmed in appeal by the highest tribunal. The transaction was held to be in its nature a mortgage, and therefore redeemable on the maxim—once a mortgage always a mortgage; and different from mere trusts to sell, without any one to redeem. Hence, I suppose, it may be assumed, that, under English law, the transfer is redeemable. So I hold the sale to be under our regulation law.

I cannot find aught in our regulations to invalidate the sale, or the conditional power to sell; but as in the case of a conditional sale to the mortgagee, the transfer under it cannot become absolute until the prescribed notice has been carried into effect. In like manner, under English law, as appears from the decision in the case of *Croft v. Powell*, the transfer remains redeemable until the lapse of the legal period of twenty years.

I therefore concur with my colleagues in the judgment they pass dismissing the claim. As, however, I have come to the same conclusion, through a different process of reasoning to that which they have pursued, I have deemed it incumbent on me to record my course.

THE 26TH JULY 1847.

PRESENT:

R. H. RATTRAY and

A. DICK, ESQRS.,

JUDGES.

W. JACKSON, ESQ.

TEMPORARY JUDGE.

CASE No. 233 of 1846.

Special Appeal from a decree passed by the Judge of Bhagulpore, Mr. F. Gouldsbury, February 26th 1845; reversing a decision passed by the Principal Sudder Ameen, Mohummud Majid Khan, November 2nd 1842.

COLLECTOR OF BHAGULPORE, APPELLANT, (DEFENDANT,) *versus*.

SHEWUK RAM, RESPONDENT, (PLAINTIFF.)

Wukeel of Appellant—Pursun Komar Thakur.

Wukeel of Respondent—E. Colebrooke.

THIS suit was instituted by respondent on the 17th August 1841, to recover the sum of Company's rupees 1,333-5-4; the same being due as *malikana*, from 1233 to the 4th Jeyt 1235 *Fuslee*.

The special appeal was admitted by Mr. Charles Tucker, on the 25th August 1846, who recorded the following certificate:—

‘ This was a suit against the Government for *malikana* under the following circumstances. Certain alluvial lands, in possession of the plaintiff, were resumed by the collector of Bhagulpore, under Regulation 2, 1819, on the 19th October 1824; and a lease of them granted in farm to one Surrubjeet for a period of ten years, from 1233 F. S., at an annual rent of Sicca rupees 2,250. The plaintiff’s claim to *malikana* was rejected by the collector, and the Board of Revenue on the 25th January 1828, on the ground that the lands were in the predicament indicated in Clause 3, Section 4, Regulation 11, 1825, and therefore the exclusive property of Government. The judge decreed for plaintiff, because the resumption decree contained no mention of the circumstances noticed in the above clause and section of Regulation 11, 1825; but that was impossible, for the resumption took place in 1824.

‘ The grounds urged for admission of a special appeal are two: *first*, statute of limitation; and *second*, want of jurisdiction in the civil courts in such a case.

‘ On the first, there can be no doubt. *Malikana* is claimed for the years 1233, 1234, and up to 4th *Jeyt* 1235 F. The suit was not instituted till 17th August 1841, corresponding with 15th *Bhadoon* 1248 F. S. Even if the cause of action be calculated from the date on which the Board of Revenue refused to allow *malikana*, viz. 25th January 1828, still the suit is not in time.

‘ On the second point, I am of opinion the petitioner is correct; and that under Section 5, Regulation 7, 1822, the question of *malikana* rests exclusively with the revenue authorities under the control of the Government itself, and is not a point that can be contested in the civil courts. In Clause 2, it is said that *malikana*, when allowed, shall not be less than five per cent., or more than ten; and this is to be decided by the revenue authorities. The judge, in this case, has allowed the highest rate: under what authority, I know not. I therefore admit the special appeal on both points.

We are of opinion that the suit being for *malikana*, for the years 1233, 1234 and 1235 F., and the date of institution being 15th *Bhadoon* 1248 F., the 12 years allowed by law had elapsed, and the suit cannot be heard: it is therefore unnecessary to enter upon the 2d point noted in this certificate. Ordered, that the decision of the judge be reversed, and the claim dismissed with costs, to be paid by the plaintiff.

THE 26TH JULY 1847.

PRESENT:

C. TUCKER, Esq.,

JUDGE.

PETITION No. 29 OF 1846.

IN the matter of the petition of Ameer Hosein and Nooraddeen, filed in this Court on the 17th February 1846, praying for the

admission of a special appeal from the decision of the third principal sudder ameen of zillah Chittagong, under date the 12th November 1845, reversing that of the moonsiff of Chittagong, under date the 29th January 1845, in the case of the petitioners, plaintiffs, *versus* Abdool Ohab and others, defendants.

In this case the petitioners sued originally for 9 *cannies*, 9 *gundahs*, and 3 *cowries* of land; and, on 25th July 1827, 5 *cannies* and 2 *gundahs* were decreed to the defendants in that suit, with liberty to the plaintiffs to bring a fresh suit for the remainder, viz. 4 *cannies*, 7 *gundahs* and 3 *cowries*.

The decision of July 1827, did not become final till 4th April 1836; appeals, and special appeals, and reviews of judgment, having intervened. The present suit for the 4 *cannies*, 7 *gundahs* and 3 *cowries* of land was instituted on the 16th September 1843, and was thrown out in appeal by the principal sudder ameen, because it was not brought within twelve years from the first decision of 25th July 1827.

This is incorrect. The first decision must be taken as a nonsuit, *quoad* these 4 *cannies*, 7 *gundahs*, and 3 *cowries*; and the limitation law will be counted from the original cause of action, deducting the period the original suit was pending in the courts. I therefore admit the special appeal; and, cancelling the decision of the principal sudder ameen, remand the proceedings for retrial on the above indicated principle.

THE 26TH JULY 1847.

PRESENT:

R. H. RATTRAY and

A. DICK, ESQRS.,

JUDGES.

W. JACKSON, ESQ.,

TEMPORARY JUDGE.

CASE No. 225 OF 1846.

Regular Appeal from a decree passed by the Principal Sudder Ameen of Tirhoot, Niamut Ali Khan, August 11th 1846.

ANDREW CRAWFORD, DAVID BEGG AND HEERA
SAHEE, APPELLANTS, (DEFENDANTS,)

versus

MUHA RAJAH ROODUR SINGH, RESPONDENT, (PLAINTIFF.)

Wukeels of Appellants—Baboo Pursun Komar Thakur and Aman Ali.

Wukeels of Respondent—J. G. Waller and Gholam Sufdur.

THIS suit was instituted by respondent on the 7th November 1845, to cancel two leases and recover possession of *mouzah* Gokulpore-parreh; with rent for 1250 and 1251 *Fuslee*, and mesne profits

for 1252 *Fuslee*. Total estimate (for stamp) Company's rupees 7,073-8-0.

Respondent gave a lease of the lands in question in 1250 *Fuslee*, to the appellant, Heera Sâhee, at an annual rent of 1,305 rupees. There were three special conditions involved in the engagement, a breach of either of which, on the part of the lessee, was to be a sufficient warrant to respondent to dissolve it. These conditions were, 1st, that no sub-lease should be given to any neighbouring zemindar; nor, 2ndly, to any resident of Nepal; nor, 3rdly, to any indigo planter.

In 1253, Heera Sahee sub-let the whole of the lands to Messrs. Crawford and Begg, indigo planters, receiving from them, in advance, 1,200 rupees. This being in violation of the 3rd condition of their agreement, respondent sues to cancel the lease and recover the lands, with the rents and mesne profits as above noted.

The principal sudder ameen, after a detailed exposition of the grounds upon which he considers Heera Sahee, only, responsible for what is claimed by respondent, ends his proceeding by passing a decree against the three appellants.

The appeal generally is founded on the assumption that, where no injury is sustained, such conditions as were involved in the lease granted by respondent, must be considered as futile and of no effect: the point more particularly urged by Messrs. Crawford and Begg, is, the injustice of making them liable for the rent for the three years prior to the date of their own engagement with Heera Sahee; till which, they had nothing to do with the lands, and can have nothing to answer for in connexion with them.

We are of opinion that the decision of the lower court must be modified. The decree for possession of the lands will stand against all the appellants; but the award of rent will hold good only against Heera Sahee, by whom respondent's costs, in both courts, will be satisfied. The costs of appellants (in both courts) will be paid by themselves respectively.

THE 27TH JULY 1847.

PRESENT:

J. HAWKINS, ESQ.,

TEMPORARY JUDGE.

PETITION NO. 341 OF 1847.

IN the matter of the petition of Gournath Mujmoadar, transmitted to this Court on the 3rd June 1847, praying for the admission of a special appeal from the decision of Major J. Matthie, deputy commissioner of Assam, under date the 24th February 1847, confirming that of Dabin Raee, principal sudder ameen of Kamroop, under date the 16th December 1846, in the case of the petitioner, plaintiff, *versus* The heirs of Gour Mohun Podar, defendants.

It is hereby certified that the said application is granted on the following grounds :—

The petitioner sued the heirs of Gour Mohun Podar, deceased, for recovery of a debt of rupees 4,785-4, principal and interest, on an account. His suit was dismissed by the principal sudder ameen and the deputy commissioner of Assam.

Part of the evidence adduced by the plaintiff was examined, and considered insufficient to prove his claim. He had however filed a list of witnesses, by whom he asserted the account and debt would be proved, and prayed they might be sent for; but both the principal sudder ameen and deputy commissioner refused his request, considering it unnecessary.

I am of opinion that the witnesses should have been sent for and examined; and considering the judgments of the lower courts incomplete, annul them, and direct that the case be restored to the file of the principal sudder ameen, with instructions that he send for and examine the rest of the plaintiff's witnesses, and then dispose of the case.

THE 27TH JULY 1847.

PRESENT:

W. JACKSON, ESQ.,

TEMPORARY JUDGE.

CASE NO. 141 OF 1845.

Regular Appeal from a decision passed by the Principal Sudder Ameen of 24-Pergunnahs, April 2nd 1845.

DYA MYE CHOWDHRAIN AND ANOTHER, APPELLANTS,
(PLAINTIFFS,)

versus

TARA PURSHAD RAE AND ANOTHER, RESPONDENTS,
(DEFENDANTS.)

*Wuheels of Appellants—Rampran Rae and Bunseebuddun Mitr.
Wuheel of Respondents—J. G. Waller.*

THIS is a claim for possession of 354 <i>biggahs</i> of land	
in <i>turf</i> Kanta-pokeria, valued at	Rs. 2,836-0-0
For <i>wasilat</i> of the same, including value of rice and	
straw at	4,254-0-0
For value of rice in the <i>golahs</i> at	1,852-0-0
For balances outstanding against <i>ryuts</i> ,	777-8-0

Total amount of suit, Rs. 9,719 8 0

The plaint states, that the plaintiffs have been dispossessed by the defendants of the land in question, by aggressions of various kinds; and, eventually, by the defendants obtaining a summary decision in their favor from the magistrate under Act 4, 1840. The plaintiffs

now sue for possession of their land, and for the sums of money above-mentioned as mesne proceeds of the land, and damages sustained by them arising from the illegal aggression of the defendants.

On the 2nd April 1845, the principal sudder ameen nonsuited the plaintiffs, on the ground that they had mixed up in their plaint the claim on account of the time previous to the decision under Act 4, 1840, and the claim on account of the time subsequent to that decision: and as these claims were entirely of a distinct nature, they should have been brought forward as separate suits.

I do not think the grounds of nonsuit recorded by the principal sudder ameen tenable. Assuming the facts as stated in the plaint, the combining the claim for possession of land with the claim for mesne proceeds and damages, was, in my opinion, perfectly correct. The decision of the magistrate under Act 4, 1840, can have no effect of splitting the claim. The plaintiffs were, as they state, dispossessed by defendants, who first by threats and violence drove their tenants away, and afterwards succeeded in getting a decision in their favor from the magistrate awarding possession to them, and carried off the crops, &c. &c. The whole of the claims urged in the plaint rest upon one point—the right of plaintiffs to the land—and they are so closely connected together, that they should all be tried at the same time. Ordered, therefore, under the provisions of Regulation 9, 1831, that the decision of the principal sudder ameen be reversed, and the case be returned, with directions to restore it to its place on the file, and to try it on its merits.

THE 29TH JULY 1847.

PRESENT:

R. H. RATTRAY, Esq., and

SIR R. BARLOW, BART.,

JUDGES.

W. JACKSON, Esq.,

TEMPORARY JUDGE.

CASE No. 241 OF 1846.

Special Appeal from a decision passed by the Judge of Patna, Mr. Arthur Smelt, March 15th 1845; affirming a decree passed by the Principal Sudder Ameen, Mohummud Ruffik Khan, December 11th 1844.

MUSST. CHOWRASSOO KOWUR, APPELLANT,
(DEFENDANT,)

versus

SOOBUN SINGH AND ANOTHER, RESPONDENTS, (PLAINTIFFS.)

Wukeel of Appellant—J. G. Waller.

Wukeel of Respondents—Hamid Rusool.

THE special appeal was admitted by Mr. Charles Tucker, on the 27th October 1846, who recorded the following certificate:—

'This suit was instituted for the recovery of a certain sum due as rent for the entire year 1247 F. S. ; but the plaintiffs, who purchased the estate by private sale, did not become proprietors of it till *Assar* of that year, and the bill of sale contains no provisions for transferring the outstanding balances to them. I therefore admit the special appeal on the ground that the plaintiffs had no authority to institute such a suit.'

We find that the plaintiffs acquired the property by private purchase, in *Assar* 1247 F., from a purchaser at public auction in *Asin* of the same year ; but the private contract contains no clause transferring to the purchaser any of the rights of the seller for time previously to the sale. Under these circumstances the plaintiffs' claim for rent for the whole year 1247, is inadmissible. Ordered that the decisions of both the lower courts be reversed, and the claim of plaintiffs dismissed : all costs to be paid by plaintiffs.

THE 29TH JULY 1847.

PRESENT :

C. TUCKER, Esq.,

JUDGE.

PETITION No. 708 OF 1845.

IN the matter of the petition of Moulvee Nehalooddeen Ahmed, filed in this Court on the 3rd November 1845, praying for the admission of a special appeal from the decision of the principal sudder ameen of zillah Shahabad, under date the 28th August 1845, altering that of the additional moonsiff of Arrah, under date the 5th February 1845, in the case of Moulvee Nehalooddeen Ahmed, plaintiff, *versus* Sheikh Amroollah and others, defendants.

This case seems to me to have been very incompletely tried in the appeal court. The plaintiff has a wall to the southward of his premises with two windows therein, and a *pooshtuh* to the south for its protection. During his absence, the defendants, he asserts, levelled a part of the *pooshtuh* and erected a wall thereon, which deprives the plaintiff of light and air, besides being erected on his land.

The moonsiff went to the spot ; and with the proceedings before him, held in the *fouzdaree* court in the year 1827 when a dispute arose about this very *pooshtuh*, found the plaintiff's complaint to be true, and directed the wall erected by the defendants to be taken down, and the *pooshtuh* to be filled up.

An appeal was preferred, and the case was referred for trial to the principal sudder ameen, who, without visiting the spot, decided that the disputed wall had always been in its present place, as he alleges is shewn by the *fouzdaree* papers ; and he reversed so much of the moonsiff's decision, as directed the disputed wall to be taken down.

Having had the whole of the proceedings before me, both those in the criminal court as well as those in the civil court, I do not find mention made in the former of any wall belonging to the defendants on the *pooshtuh*; and, as it is admitted that the *pooshtuh* belongs to the plaintiff, it is not probable.

I therefore admit the special appeal applied for; and, annulling the decision of the principal sudder ameen, remand the proceedings with orders for re-investigation of the case in appeal, after the principal sudder ameen shall have gone to the spot, and examined the premises in person.

THE 29TH JULY 1847.

PRESENT:

R. H. RATTRAY, ESQ., and

SIR R. BARLOW, BART.,

JUDGES.

W. JACKSON, ESQ.,

TEMPORARY JUDGE.

CASE No. 198 OF 1846.

Special Appeal from a decree passed by the Principal Sudder Ameen of Tirhoot, Niamut Ali Khan, February 15th 1845, reversing one passed by the Moonsiff of Tegreh, Ali Buksh, June 29th 1844.

MOORUT SINGH, APPELLANT, (DEFENDANT,)

versus

KASHEE PURSHAD, RESPONDENT, (PLAINTIFF.)

Wuheel of Appellant—Aman Ali.

Wuheel of Respondent—Ameer Ali.

THIS suit was instituted by respondent on the 31st March 1843, to recover from appellant Company's rupees 276-10; the same being due as rent for 1249 *Fuslee*, on 61 *biggahs*, 13 *biswas*, 15 *dhooors* of land, in *chuk* Shureefoolah-Bukhshun.

The special appeal was admitted by Mr. J. F. M. Reid, on the 18th August 1846, who recorded the following certificate:—

‘Plaintiff, a farmer of *chuk* Shureefoolah-Bukhshun, a *nizamut mehal* in *pergunnah* Bulea, sued to enhance the rent payable by defendant for certain lands, for the year 1249 *Fuslee*, under a notice issued in *Poos* of that year. The moonsiff deeming the notice informal, as not having been issued in *Jeyt*, rejected the claim to an enhanced rent. The principal sudder ameen reversed the decision; and, for the reasons stated in his own decision, decreed the enhanced rent.

‘The moonsiff, in my opinion, was right. The notice issued in *Poos* could not, I conceive, be acted upon. To try this point, I think a special appeal is admissible.’

We find, that the decision of this case does not turn on the point noted in the certificate, viz. the issue of the notice under Regulation 5, 1812. On the contrary, the claim for rent is made under a specific agreement between the parties, and although a notice was issued, that was not necessary to establish the plaintiff's claim. Ordered, that the special appeal be dismissed; with costs against the appellant.

THE 29TH JULY 1847.

PRESENT :

J. HAWKINS, ESQ.,

TEMPORARY JUDGE.

PETITION NO. 347 OF 1847.

IN the matter of the petition of Sheikh Kijree, filed in this Court on the 18th June 1847, praying for the admission of a special appeal from the decision of Mr. E. DaCosta, principal sudder ameen of Patna, under date the 19th March 1847, confirming that of Opendur Misr, sudder moonsiff of Patna, under date the 13th November 1846, in the case of Russool Buxsh, plaintiff, *versus* the petitioner and three others, defendants.

It is hereby certified that the said application is granted on the following grounds:—

The plaintiff sued the defendants in this case for the recovery of 298 rupcees, on a bond alleged to have been executed by them. The moonsiff and principal sudder ameen gave judgment against two of the defendants, and released the other two from all liability.

The investigation in this case has been very incomplete and unsatisfactory. The two defendants exonerated are women; but as their names are attached to the bond, some satisfactory reason should have been given why it was considered that two of the parties signing it were responsible, and not the other two.

The defendants deny the bond: and it does not appear from the decrees, that any consideration was ever given for the sum now sought to be recovered. The principal sudder ameen, moreover, in addition to the evidence taken by the moonsiff, takes the deposition of one Jhao, who is alleged to have written the names of the defendants on the bond, and says that this man's deposition corroborates the rest of the evidence. A copy of that deposition has been produced, and the deponent denies all knowledge of the bond, and also denies his having written the names of the defendants. He says

indeed, that he was asked 10 or 11 months ago to attest some deed ; but the bond, on which this suit has been brought, is dated 4½ years before the witness was examined. The case has been decided without any such investigation as its merits demanded ; and I accordingly remand it under the provisions of Clause 2, Section 2, Regulation 9, 1831, for further enquiry.

THE 31ST JULY 1847.

PRESENT :

C. TUCKER, Esq., and

SIR R. BARLOW, BART.,

JUDGES.

J. HAWKINS, Esq.,

TEMPORARY JUDGE.

PETITION NO. 357 OF 1847.

IN the matter of the petition of Ramsoondur Pal and others, filed in this Court on the 21st June 1847, praying for the admission of a special appeal from the decision of Mr. R. E. Cunliffe, judge of Mymensingh, under date the 20th March 1847, reversing that of Mr. C. Mackay, principal sudder ameen of Mymensingh, under date the 13th July 1846, in the case of the petitioners, plaintiffs, *versus* Chundrabullee Dibbea and others, defendants.

It is hereby certified that the said application is granted on the following grounds:—

The petitioners sued for possession of an alleged *mocurruree* tenure, stating that they, and their ancestors, had held it for a period antecedent to the decennial settlement; and that they had been ousted by the defendants, who purchased the zemindaree in which the *mocurruree* tenure was comprised, at a sale for arrears of revenue, made under the provisions of Regulation 11, 1822. The principal sudder ameen gave judgment for the petitioners; but his judgment was reversed by the judge, on the ground that the plaintiffs had failed to prove their having held the lands at a fixed *jumma*. From this decision, the plaintiffs have applied for admission of a special appeal.

The Court observe, that the judge has lost sight of the point at issue. The plaintiffs sued for *possession*, stating that the tenure existed prior to the decennial settlement; and, if they could prove this fact, they were entitled to a decree, as the auction purchaser could not summarily eject such *mocurrureedar*. The purchasers might in that case have taken measures to procure a fresh assessment of the tenure, but they could not eject.

Under these circumstances we admit the special appeal, and remand the case for re-investigation to the judge, in order, that he

may take proof as to the possession, or otherwise, of the *mocurrurees* for a period antecedent to the decennial settlement, governing his decision by the result indicated by the evidence.

THE 31ST JULY 1847.

PRESENT :

C. TUCKER, ESQ., and

SIR R. BARLOW, BART.,

JUDGES.

J. HAWKINS, ESQ.,

TEMPORARY JUDGE.

CASE No. 74 OF 1847.

Special Appeal from a decision passed by Mr. E. Deedes, Additional Judge of Zillah 24-Fergunnahs, under date the 16th of September 1844; amending a decree passed by the Principal Sudder Ameen of that district, under date 16th of April 1844.

BISHEN SOONDUREE DIBBEA, AND ANOTHER, APPELLANTS, (DEFENDANTS,)

versus

AGA. MOHUMMUD KAMEL, RESPONDENT, (PLAINTIFF.)

Wuheels of Appellants—E. Colebrooke and Gourhuree Bonnerjee.

Wuheel of Respondent—Moulvee Hamid Russool.

THIS case was admitted to special appeal on the 7th March 1846, under a certificate recorded by Mr. J. F. M. Reid.

The plaintiff sued for possession of two gardens, one consisting of 8 *biggahs* of *khiraj*, the other of 16 *biggahs* of *lakhiraj* land, stating that he had purchased them from the former proprietors, but had been disturbed in his possession by the defendants, who are proprietors of the zemindaree in which the gardens are situated. The principal sudder ameen gave the plaintiff a decree for the 8 *biggahs khiraj*; but rejected his claim to the 16 *biggahs lakhiraj* land, on the ground,—*first*, that the *lakhiraj* tenure had not been proved; and *secondly*, that the possession of the plaintiff, or of his vendors, within a period of 12 years, had not been established.

The additional judge, in appeal by the plaintiff, reversed the decree of the principal sudder ameen, in regard to the 16 *biggahs* of *lakhiraj* land, on the ground that the purchase and possession of the plaintiff had been clearly proved; remarking, however, that the principal sudder ameen should not have declared the plaintiff's deed of sale valid for one portion of the property, and invalid for the rest.

It was to try the correctness, or otherwise, of this *dictum* that the special appeal was admitted by Mr. Reid.

The correctness of the *dictum*, as a general position, cannot be maintained, as the decision must depend upon the circumstances of each case. We find, however, that notwithstanding the *dictum*, the additional judge finally decided upon the merits of the case. We accordingly dismiss the appeal, and confirm the decree of the additional judge.

THE 31ST JULY 1847.

PRESENT :

C. TUCKER, Esq., and

SIR R. BARLOW, BART.,

JUDGES.

J. HAWKINS, Esq.,

TEMPORARY JUDGE.

CASE No. 76 of 1846.

Special Appeal from a decision passed by the Judge of Beerbhagm, July 22nd 1844; reversing a decree passed by the Principal Sudder Ameen, December 12th 1843.

SHEONARAIN GHOSE, APPELLANT, (PLAINTIFF,)

versus

RANEE JYMUNNEE, AND OTHERS, RESPONDENTS,
(DEFENDANTS.)

Wukeel of Appellant—Pursun Komar Thakur.

Wukeel of Respondents—Gholam Sufdur.

THIS case was admitted to special appeal, on the 19th February 1846, under the following certificate recorded by Mr. W. Jackson :—

‘ The judge nonsuits the plaintiff on the ground that he has not given the boundaries of the land claimed, and that he has not explained why the suit is not barred by the rule of limitation in his petition of plaint. The petitioner asserts, that it is impossible to give the boundaries of the thing claimed as it is a fractional share, which has not been divided off; and further, that as the rule of limitation does not bar the suit, it was unnecessary for him to enter on this point. It appears to me doubtful, whether the plaintiff could comply with the order of the judge that he should point out the boundaries of the land sued for, and that the grounds of the order of nonsuit are not good and sufficient. The special appeal is admitted to try this point.’

On reference to the pleadings, we find that the defendants pleaded the statute of limitations in bar of the plaintiff's claim, and that the plaintiff in his reply contented himself with a simple denial. Under these circumstances, it was incumbent on the judge to come to a

definite decision on that point; and if the defendants' plea was established, to dismiss the case. We therefore annul the order of non-suit, and remand the proceedings to the judge, who will proceed as above indicated. Should the plea of limitation not be established in bar of the plaintiff's claim, it will be open to the judge to consider the propriety of a nonsuit on the other point.

THE 31ST JULY 1847.

PRESENT:

C. TUCKER, Esq., and

SIR R. BARLOW, BART.,

JUDGES.

J. HAWKINS, Esq.,

TEMPORARY JUDGE.

CASE No. 122 OF 1846.

Special Appeal from a decision passed by B. Golding, Esq. Judge of East Burdwan, under date the 16th August 1844; reversing a decree passed by the Principal Sudder Ameen of the said zillah, under date 22nd December 1843.

SYUD MOOZUFFUR ALI *alias* TEETOO MEEAH, APPELLANT, (DEFENDANT),

versus

CHUMPABUTTEE DIBBEA, RESPONDENT, (PLAINTIFF.)

*Wukeels of Appellant—Rampran Raee and Bunsee Buddun Mitr.
Wukeel of Respondent—Sheo Narain Chatterjee.*

THIS case was admitted to special appeal, on the 17th February 1846, under the following certificate recorded by Mr. Charles Tucker:—

'The plaintiff sued to obtain possession of an estate paying revenue to Government, under a deed of mortgage executed by defendant's father to her husband. She laid her suit at three times the amount of the *sudder jumma*, as well as the value of the estate. The judge did not correct this, but on the appeal gave the plaintiff a decree with costs. Now, the valuation should have been confined to three times the amount of the *sudder jumma*, and the costs on that amount only. Special appeal admitted to correct the error in the matter of costs.'

Under the above circumstances, which speak for themselves, we amend the decree of the lower court in the matter of costs.

The appellant (defendant) will be charged with costs at the amount at which the suit should have been laid, viz. three times the *sudder jumma* of the estate and no more: and the costs of this appeal are chargeable to the respondent.

THE 31ST JULY 1847.

PRESENT :

C. TUCKER, ESQ., and
SIR R. BARLOW, BART.,
JUDGES.

J. HAWKINS, ESQ.,

TEMPORARY JUDGE.

CASE No. 363 OF 1845.

Special Appeal from a decision passed by Mr. Charles Davidson, Additional Judge of Hooghly, under date the 29th July 1845; reversing a decree passed by the Principal Sudder Ameen under date 19th September 1843.

KISHEN CHUNDER NEOGEE, APPELLANT, (PLAINTIFF,)

versus

DOORGA CHURN SHOOR, KASSEENATH BURRAJ,
AND OTHERS, RESPONDENTS, (DEFENDANTS.)

Wukeel of Appellant—Kishen Kishore Ghose.

Wukeels of Respondents—Abas Ali and Gholam Sufdur.

THIS case was admitted to special appeal, on the 18th November 1845, under the following certificate recorded by Mr. Charles Tucker:—

‘ The plaintiff sued to recover possession of a *putnee talook*, from Doorga Churn Shoor, under the following circumstances. He had himself purchased the *talook*, at a public sale, made for the recovery of the rent due to the zemindar for the first six months of the Bengal year 1243 : but, falling in balance, the *talook* was again exposed to sale for the recovery of the balance due at the close of the same year, when, he asserts, he re-purchased it in the name of Doorga Churn Shoor and held possession, paying the zemindar’s dues regularly till 1247 ; when Doorga Churn set up a claim to be the purchaser, and sued his tenant, Kasseenath Burrall, in a summary suit for balance of rent ; which suit being rejected by the collector, on the ground that the proprietary right in the *talook* was contested, he, Doorga Churn Shoor, brought his suit against Kasseenath Burrall in the civil court, and obtained a decree from the sudder ameen, who referred him, Kishen Chunder Neogee, to the civil court, to establish his proprietary right. Thus originated this suit.

‘ Kishen Chunder Neogee obtained a decree from the principal sudder ameen, which was reversed on appeal by the additional judge, who refused to entertain the question at all; remarking that the plaintiff admitted himself to have purchased the *talook benamee*, he being then a defaulter, and that such purchase was prohibited by Section 9, Regulation 8, 1819.

‘The petitioner urges, that, though the regulation quoted prohibits the defaulter bidding at the sale, the forfeiture of the estate so purchased is no where declared to be the consequence.

‘It is true, that the purchase by a defaulter is prohibited; but, it is equally true, that the penalty is no where declared. A prohibition, without a penalty attached, seems to be inoperative; and as I have already admitted a special appeal on a similar case, (that of Anund Mye Dutt, No. 106 of 1845) on the 24th June 1845, I admit this to try whether forfeiture of the *talook* purchased is the penalty of a breach of Section 9, Regulation 8, 1819; and, if so, whether in the case of a *benamee* purchase, as in the present instance, the person whose name has been made use of, is to derive the benefit of his participation in the fraud practised by the purchaser, and get the estate without paying a *cowrie* for it: and whether, at all events, it is not incumbent on the civil court, when such a case is brought before it, to entertain it and decide who was the real purchaser.’

The case referred to in the above certificate [Anund Mye Dutt *v.* Ram Jye Mundul and others] was decided by us on the 3d instant; and it was therein ruled, that a defaulter, re-purchasing his own tenure, is, by Section 9, Regulation 8, 1819, barred all remedy in Court, as he cannot recover on a title the creation of which is prohibited by law.

We therefore dismiss the appeal, affirming the decision of the lower court, with all costs payable by the appellant.

THE 31ST JULY 1847.

PRESENT:

C. TUCKER, Esq., and

SIR R. BARLOW, BART.,

JUDGES.

J. HAWKINS, Esq.,

TEMPORARY JUDGE.

CASE No. 35 of 1847.

Special Appeal from a decision passed by Thomas Taylor, Esq., Judge of Mymensingh, March 22nd 1845; affirming a decree passed by Ousaf Ali, Sudder Ameen, 31st August 1844.

RUTTUN MUNNEE DASSEE AND OTHERS, APPELLANTS,
(PLAINTIFFS,)

versus

COLLECTOR OF MYMENSINGH, JEEWUN KISHEN
RAEE, AND OTHERS, RESPONDENTS, (DEFENDANTS.)

Wukeel of Appellants—Abas Ali.

*Wukeels of Respondents—Pursun Komar Thakur and E.
Colebrooke.*

THIS case was admitted to special appeal, on the 17th November 1846, under the following certificate recorded by Mr. C. Tucker:—

'An estate being under *butwarrah* under the provisions of Regulation 19, 1814, one Kishen Kaunth, the ostensible proprietor of a dependent *talook* situated therein, was called upon by the collector to deliver up his accounts, and, failing to do so, was fined 117 rupees. The fine not having been paid, the rights and interests of Kishen Kaunth were sold at public sale to realize the amount, and were purchased by Jeewun Kishen, who again sold half his purchase to Birjnath Bose. These purchasers took possession of the entire *talook*, and the present suit was then instituted. Ruttun Munnee Dasse, the widow of Kishen Kaunth, urged, that the collector had no authority to fine under-tenants in an estate under *butwarrah*, for, not delivering up their accounts. Fukeer Chaund Race and Bholanath Race, brothers of Kishen Kaunth, urged that they were proprietors of two-thirds of the estate; and that as the interests of Kishen Kaunth only had been sold, the purchasers had no title to take possession of the entire *talook*. The plaint was dismissed by the sudder ameen, and his decision was affirmed by the judge.

A special appeal was admitted on two grounds:—'First. • To try whether the collector has authority to impose a fine on an under-tenant, in an estate under *butwarrah*, for refusing or neglecting to deliver his accounts when called for. Secondly. To try whether two decrees, previously obtained by Fukeer Chaund Race and Bholanath Race, establishing their coparcenership in the estate with their brother Kishen Kaunth, and which they filed on the record of this case, were not binding on the court on this point; in the absence of any evidence that the said decrees had ever been cancelled by superior authority, or that the parties had otherwise disposed of their rights.'

The first question having already been disposed of on the 19th ultimo, in the case of Hurnath Surmah Chowdhree and others, appellants, v. Collector and Deputy Collector of zillah Mymensingh, respondents, ruling that the collector has no authority under Clause 2, Section 17, Regulation 19 of 1814, to fine any other than the proprietors of the estate under *butwarrah*, for not furnishing their accounts when called for. We reverse the decisions of the lower courts, and decree for the plaintiff. Costs chargeable to the Government officers, defendants in the suit. This renders any opinion on the second point unnecessary.

THE 31ST JULY 1847.

PRESENT:

C. TUCKER, Esq., and

SIR R. BARLOW, BART.,

JUDGES.

J. HAWKINS, Esq.,

TEMPORARY JUDGE.

CASE No. 124 OF 1846.

Special Appeal from a decision passed by Mr. James Grant, Judge of Dinagepore, 21st August 1844; affirming a decree passed by Mohummud Khoorshed, Principal Sudder Ameen, 28th November 1848.

COLLECTOR OF DINAGEPORE, APPELLANT, (DEFENDANT,)

versus

MUHA MYE DIBBEA, RESPONDENT, (PLAINTIFF.)

Wukeel of Appellant—Pursun Komar Thakur.

Wukeel of Respondent—J. G. Waller.

THIS case was admitted to special appeal, on the 3rd March 1846, under the following certificate recorded by Mr. Charles Tucker:—

‘In this case the plaintiff stated that her son, Hurry Sunkur Chuckurbuttee, engaged with the collector of Dinagepore for the farm of an estate of a minor under the Court of Wards, for seven years from 1242 to 1248 B. S.; but, pending the confirmation of the commissioner, a *surberakar* was deputed to collect the rents, who was so employed from *Kartick* to *Phalgun* 1242, during which period he collected rupees 11,569-13-10. That on adjustment of the *surberakar*’s accounts, when making over the farm to her son, the collector deducted from the above amount rupees 1,577-12-16: of which rupees 674-4-16 was on account of *mofussil* or *dehutee* expenses, and the remainder, or rupees 963-8, on account of the *suberakar*’s wages and establishment, and allowed her son credit for the residue only, viz. 9,992-0-14. That her son having died, and she being his heir, and objecting to the deduction of the sum of rupees 963-8 from the collection made by the *surberakar*, entered the present suit for the recovery of the same with interest.

‘The principal sudder ameen decreed for the plaintiff; but ordering the defendant, the collector, to pay the amount from the minor’s funds in his hands. The judge upheld this decision.

‘The special appeal is urged on the grounds, that, on such occasions, it is the custom to charge the total expended against the collections; that there is always a *sudder* establishment distinct and separate from the *mofussil* or *dehutee*; that the sum objected to was for the former, and that the sum total does not exceed 13 per cent. on the collections.

‘The case is a novel one; and, as far as my experience goes, I am inclined to think that the special appellant is correct; at all events, it is a case of importance calling for a judicial decision, and I admit the special appeal to try to what extent, in such cases, the collections may be charged with expenses against the farmer.’

Under the circumstances of this case, as set forth in the above certificate, we are of opinion that the farmer was justly chargeable with the total expense incurred, *sudder* and *mofussil*, in making the collections, such expenses being fair and reasonable. In the present case, the expenses do not exceed 13 per cent. on the amount realized; and considering that a fair charge, we decree for the appellant, reversing the decree of the lower court, with all costs payable by the respondent.

THE 31ST JULY 1847.

PRESENT:

C. TUCKER, Esq., and

SIR R. BARLOW, BART.,

JUDGES.

J. HAWKINS, Esq.,

TEMPORARY JUDGE.

CASE No. 145 of 1846.

Special Appeal from a decision passed by the Judge of West Burdwan, under date 18th December 1844; reversing a decree passed by the Sudder Ameen, under date the 12th June 1844.

CHUNDUR NARAIN CHUCKERBUTTY, AND ANOTHER,
APPELLANTS, (DEFENDANTS),

versus

MUSST. ZUMEER-O-NISSA, RESPONDENT, (PLAINTIFF.)

Wukeel of Appellants—Ramapershad Raee.

Wukeel of Respondent—Nilmoney Bonnerjee.

THIS case was admitted to special appeal, on the 17th June 1846, under the following certificate recorded by Sir R. Barlow:—

‘Plaintiff sued for possession of 22 *beegahs*, 7 *cottahs* of land called Paneefollah, at 18 times their produce, being a portion of certain *lakhiraj* lands purchased by her late husband from Muthoor Mohun Bose; a quit rent of 2 rupees, 6 *annas* for the said 22 *beegahs*, 7 *cottahs*, was paid to the proprietors of Radhamunpoor village, to which they were attached. The said village was resumed by the Government, and the said lands were measured as belonging to it in plaintiff’s absence. She appealed to the special commissioner, but no investigation was entered upon by that officer, plaintiff therefore sued for possession, and *wasilat* from 1241 to 1243.

‘The collector, in answer, pleaded that, under provisions of Regulation 9 of 1825, and Section 23, Regulation 7 of 1822, the plaint was inadmissible; that, if she had any title, she could only sue to have settlement made with her.

‘The purchaser, Chunder Narain Chuckerbutty, pleaded to the same effect; and that, having purchased the village, a settlement was made with him after resumption.

‘The sudder ameen dismissed the suit, as plaintiff had not complied with the requisition of Clause 12, Section 5, Regulation 9 of 1825, but had come into court after the lapse of a period of 8 years. The judge reversed the above decision. He was of opinion that the claim could not be thrown out under the law above quoted, as the revenue authorities had not carried out the preliminary process required by it. Plaintiff had proved her husband’s purchase of the 22 *beegahs*, 7 *cottahs* in the village Paneefollah, by the decree of the register in 1815. Neither the collector or the Government could make a settlement of the lands in dispute with the defendant under such circumstances. He decreed possession to plaintiff on the quit rent (2 rupees, 6 *annas*) awarding *wasilat* for the period claimed at 19 rupees per annum, with interest to date of realization and costs. The action now brought for possession is clearly barred by the resumption laws, under which the orders of the special commissioner in cases of resumption are final. A special appeal is admitted to reverse the judge’s decision.

It appears from the proceedings, that the lands claimed by the plaintiff have been measured and assessed as part of village Radhamunpoor by the resumption officers; and that the plaintiff now claims to hold them on a quit rent of 2 rupees, 6 *annas*, as lands under the name of Paneefollah, being in fact an application to the civil courts to interfere with the resumption courts to whom she had already unsuccessfully preferred her petition. The civil courts have, in such matters, no jurisdiction. We annul the proceedings *ab initio*, and dismiss the plaint: all costs chargeable to the respondent, the original plaintiff.

THE 31ST JULY 1847.

PRESENT:

C. TUCKER, Esq., and
SIR R. BARLOW, BART.,

JUDGES.

J. HAWKINS, Esq.,

TEMPORARY JUDGE.

CASE No. 37 OF 1847.

Special Appeal from a decision passed by Mr. T. Taylor, Judge of Zillah Mymensingh, under date the 26th March 1845; reversing a decree passed by the Sudder Ameen, 9th December 1844.

FUKEER CHAUND DEO AND OTHERS, APPELLANTS,
(PLAINTIFFS,)

versus

BRIJMOHUN DAS AND OTHERS, RESPONDENTS,
(DEFENDANTS.)

Wukeel of Appellants—J. G. Waller.

Wukeel of Respondents—Pursun Komar Thakur.

THIS case was admitted to special appeal, on the 10th November 1846, under the following certificate recorded by Mr. Charles Tucker:—

‘In this case I think there has been an illegal application of the statute of limitations, under which the suit instituted has been dismissed. The plaintiffs state, that they purchased six *gundahs*, three *cowries* of kismut Chaerparrah, &c., from Subboo Ram Das, proprietor of four *annas*, six *gundahs*, three *cowries*, in the 14 *annas*’ *hissa* on 26th *Bysack* 1229 (7th May 1822.) The property had been let in farm by Subboo Ram; and there was, at the time of sale, a suit pending in the civil court, brought by the farmer for possession of the lands farmed to him, for the period of his lease. On this account Subboo Ram gave a written engagement to the purchaser, to this effect:—that, in the event of the farmer succeeding in his suit, and regaining possession of the lands, he, Subboo Ram, would make good to the purchasers the amount proceeds of the lands purchased by them.

‘The farmer did succeed, and was put in possession of the property; but Subboo Ram failing to act up to his engagement, the purchasers brought a suit against Brijmohun Das and others, the sons of Subboo Ram, now dead, for these proceeds; and obtained

a decree from the sudder ameen on the 2d June 1830. * In the mean time, owing to some affray in which the several sharers were engaged, and in which some lives were lost, the entire estate had been confiscated to Government; but an appeal made to the Sudder Dewanny Adawlut by the late proprietors, against the order of escheat by the zillah court, was pending, when Brij Mohun Das appealed to the judge against the decision of the sudder ameen above mentioned. On 27th September 1833, the judge, remarking that until the respondents' purchase should be established (it was denied by Brij Mohun,) they could not of course get the proceeds of the lands, whilst the escheat of the entire estate to Government presented an obstacle to such a course, annulled the decision of the sudder ameen; but with this reservation in favor of the respondents (original plaintiffs) that, in the event of the escheat to Government being confirmed by the Sudder Court, they might bring a suit against Subboo Ram's heirs, for the recovery of the money paid by them for the lands: but, if the escheat should be revoked, and the estate restored to the late proprietors, in that case the respondents might bring their suit for possession of the lands. The respondents accordingly waited the result of the appeal pending in the Sudder Court, which was disposed of on the 14th July 1840, revoking the escheat, and restoring the estate to the late proprietors. The present suit for possession of the lands sold by Subboo Ram, was brought on the 19th December 1842. The case was dismissed by the sudder ameen on 21st May 1844, under the statute of limitations. On appeal, the acting judge, Mr. Charles Davidson, conceiving, under the circumstances, that the statute of limitations had not been infringed, returned the case to the sudder ameen, with directions to dispose of it on its merits. On the 9th December 1844, the sudder ameen decreed for plaintiffs. The case was again appealed by Brij Mohun, &c. Mr. T. Taylor now held the office of judge; and, on 26th March 1845, he dismissed the original plaint as not having been brought within twelve years from the date of the plaintiffs' alleged purchase, quoting as his precedents *Constructions 813 and 1036*, and the case of *Hurreenath Raee v. Doorga Pershad*, decided in the Sudder Court on the 23d March 1844. The last mentioned is merely an order rejecting an application made for a special appeal, and the *Constructions*, in my opinion, do not apply. As in this case a regular suit was instituted by the petitioners, the course of which was arrested by the Court, and authority given to bring a new suit after a certain event, I therefore admit the special appeal to try whether the statute of limitations forms any bar to the disposal of this case on its merits, or not.'

We are of opinion, under the special circumstances of this case, as set forth in the certificate above recorded, that the period of limitation should be calculated from the 14th July 1840, the date of the decree of the Sudder Dewanny Adawlut, reversing the escheat; and that consequently the plaintiff was within time.

We accordingly reverse the decision of Mr. Taylor, of date the 26th March 1845, and remand the proceedings for the zillah judge to pass a decision on the merits.
